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WHEN: Tuesday, May 14, 2013
9 a.m.–12:30 p.m.

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Washington, DC 20002

RESERVATIONS: (202) 741–6008

Contents

Federal Register

Vol. 78, No. 82

Monday, April 29, 2013

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25085–25088

Agricultural Marketing Service
RULES
Assessment Rates:
Domestic Dates Produced or Packed in Riverside County, California, 24983–24985
Irish Potatoes Grown in Washington, 24981–24983
Olives Grown in California, 24979–24981

Agriculture Department
See Agricultural Marketing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25058

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Business and Professional Classification Report, 25059–25060

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25088–25089

Centers for Medicare & Medicaid Services
PROPOSED RULES
Medicare Program:
Requirements for the Medicare Incentive Reward Program and Provider Enrollment, 25013–25033
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25089–25090

Coast Guard
RULES
Regulated Navigation Area, Gulf of Mexico:
Mississippi Canyon Block 20, South of New Orleans, LA, 24987–24990
PROPOSED RULES
Safety Zones:
Fairfield Estates Fireworks Display, Atlantic Ocean, Sagaponack, NY, 25008–25011

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25058–25059

Commodity Futures Trading Commission
NOTICES
Meetings:
Technology Advisory Committee, 25061

Defense Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25061–25062
Construction, Renovation, Repair or Expansion of Public Schools Located on Military Installations, 25062–25063
Renewal of Department of Defense Federal Advisory Committees, 25063–25064

Energy Department
See Energy Efficiency and Renewable Energy Office
See Energy Information Administration
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board, Paducah, 25064

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board; Teleconference, 25064–25065

Energy Information Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25065–25066

Environmental Protection Agency
RULES
Air Quality Implementation Plans; Approvals and Promulgations:
District of Columbia; Volatile Organic Compounds Emissions Reductions Regulations, 24992–24997
Ohio; Volatile Organic Compound Emission Control Measures for Cleveland Ozone Nonattainment Area, 24990–24992
Protection of Stratospheric Ozone:
Listing of Substitutes for Ozon-Depleting Substances—Fire Suppression and Explosion Protection, 24997–25003
PROPOSED RULES
State Implementation Plan; Revisions:
California; Antelope Valley Air Quality Management District; Santa Barbara County Air Pollution Control District; South Coast Air Quality Management District; Ventura County Air Pollution Control District, 25011–25013
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Ambient Air Quality Surveillance, 25078–25079
Forum on Environmental Measurements:
Competency Policy for Assistance Agreements, 25079–25081
National Pollutant Discharge Elimination System Permits:
Generation, Treatment, Use/Disposal of Sewage Sludge by Land Application, Landfill, etc. in Region 8, 25081–25082

Proposed Administrative Cost Recovery Settlement under CERCLA:
Leadwood Mine Tailings Superfund Site, St. Francois County, MO, 25082–25083

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Airworthiness Directives:
Cessna Aircraft Company Airplanes; Correction, 24985
Restricted Areas; Amendments and Establishment:
R–6703A, B, C, D and R–6703E, F, G, H, I, and J, Washington, 24985–24987
PROPOSED RULES
Class E Airspace; Establishment:
Port Townsend, WA, 25005–25006
Establishments of Area Navigation (RNAV) Routes:
Washington, DC, 25006–25008
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Aircraft Registration Renewal, 25133–25134
National Flight Data Center Web Portal, 25133
Air Tour Management Plans and Environmental Assessments; Termination:
Petrified Forest National Park, AZ, 25134
Meetings:
RTCA Special Committee 217 – Aeronautical Databases Joint with EUROCAE WG–44 – Aeronautical Databases, 25134–25135

Federal Communications Commission
RULES
Radio Experimentation and Market Trials:
Streamlining Rules, 25138–25176
NOTICES
Applications for State Certification for the Provision of Telecommunications Relay Service, 25083

Federal Deposit Insurance Corporation
NOTICES
Updated Listing of Financial Institutions in Liquidation, 25083–25084

Federal Energy Regulatory Commission
NOTICES
Applications:
Columbia Gas Transmission, LLC, 25068–25069
Girard Gurgick, 25066
Northwest Pipeline GP, 25067
South Carolina Electric and Gas Co., 25069–25070
Warmsprings Irrigation District, 25067–25068
Combined Filings, 25070–25074
Environmental Assessments; Availability, etc.:
Elba Liquefaction Project; Elba Liquefaction Co., LLC, et al., 25074–25076
Line MB Extension Project; Columbia Gas Transmission, LLC, 25077–25078
Southern California Edison Co., 25076–25077
Staff Attendances, 25078

Federal Financial Institutions Examination Council
NOTICES
Meetings:
Appraisal Subcommittee, 25084

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 25084–25085
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 25085

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Endangered Status for the Fluted Kidneyshell and Slabside Pearlymussel and Designation of Critical Habitat, 25041–25044
Threatened Status for the Spring Pygmy Sunfish and Designation of Critical Habitat, 25033–25041
NOTICES
Environmental Impact Statements; Availability, etc.:
Prime Hook National Wildlife Refuge, Sussex County, DE, 25092–25093
Multistate Conservation Grant Program:
Priority List and Approval for Conservation Projects, 25093–25094

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25094–25096

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See National Institutes of Health

Healthcare Research and Quality Agency
See Agency for Healthcare Research and Quality

Homeland Security Department
See Coast Guard

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Ocean Energy Management Bureau
See Office of Natural Resources Revenue

International Trade Administration
NOTICES
Export Trade Certificates of Review, 25060

Land Management Bureau
NOTICES
Call for Nominations:
Dominguez–Escalante National Conservation Area Advisory Council, CO, 25096–25097
Meetings:
Rio Grande Natural Area Commission, 25097
Realty Actions:
Competitive, Sealed-Bid, Spring SNPLMA Sale of Public Lands in Clark County, NV, 25097–25100

National Aeronautics and Space Administration
NOTICES
Meetings:
NASA Advisory Council; Aeronautics Committee, Unmanned Aircraft Systems Subcommittee, 25100–25101

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Certificate of Confidentiality Electronic Application System, 25090–25091
Request for Human Embryonic Stem Cell Line to be Approved for Use in NIH-Funded Research, 25091–25092

National Oceanic and Atmospheric Administration
RULES
Fisheries of the Exclusive Economic Zone Off Alaska:
Pacific Cod by Catcher Vessels Using Hook-and-line Gear in the Western Regulatory Area of the Gulf of Alaska, 25004
Fisheries of the Northeastern United States:
Summer Flounder Fishery; Quota Transfer, 25003–25004
PROPOSED RULES
Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:
Snapper–Grouper Fishery off the Southern Atlantic States; Amendment 28, 25047–25052
Fisheries of the Northeastern United States:
Recreational Management Measures for Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2013, 25052–25057
Listing Endangered or Threatened Species:
90-Day Finding on a Petition to Include the Killer Whale Known as Lolita in Listing of Southern Resident Killer Whales, 25044–25047
NOTICES
Meetings:
North Pacific Fishery Management Council, 25060–25061

National Science Foundation
NOTICES
Meetings:
Proposal Review Panel for Physics, 25101

Ocean Energy Management Bureau
NOTICES
Meetings:
Outer Continental Shelf Scientific Committee, 25100

Office of Natural Resources Revenue
PROPOSED RULES
Indian Oil Valuation Negotiated Rulemaking Committee Meeting, 25008

Presidential Documents
PROCLAMATIONS
Special Observances:
Honoring the Victims of the Explosion in West, TX (Proc. 8963), 25177–25179

Securities and Exchange Commission
NOTICES
Meetings:
Credit Ratings Roundtable, 25101–25102
Meetings; Sunshine Act, 25102
Self-Regulatory Organizations; Proposed Rule Changes:
BOX Options Exchange LLC, 25130–25132
Chicago Board Options Exchange, Inc., 25112–25115
Chicago Mercantile Exchange Inc., 25116–25118
Fixed Income Clearing Corp., 25115–25116, 25128–25130
ICE Clear Europe Ltd., 25129
New York Stock Exchange LLC, 25118–25128
NYSE MKT LLC, 25102–25112
Trading Suspension Orders:
Enercorp, Inc., et al., 25132

Transportation Department
See Federal Aviation Administration

Treasury Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25135–25136

Separate Parts In This Issue

Part II
Federal Communications Commission, 25138–25176

Part III
Presidential Documents, 25177–25179

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8963.....25179

7 CFR

932.....24979
946.....24981
987.....24983

14 CFR

39.....24985
73.....24985

Proposed Rules:

71 (2 documents) 25005, 25006

30 CFR

Proposed Rules:

1206.....25008

33 CFR

165.....24987

Proposed Rules:

165.....25008

40 CFR

52 (2 documents) 24990, 24992
82.....24997

Proposed Rules:

52.....25011

42 CFR

Proposed Rules:

405.....25013
420.....25013
424.....25013
498.....25013

47 CFR

0.....25138
1.....25138
2.....25138
5.....25138
22.....25138
73.....25138
74.....25138
80.....25138
87.....25138
90.....25138
101.....25138

50 CFR

648.....25003
679.....25004

Proposed Rules:

17 (2 documents) 25033, 25041
224.....25044
622.....25047
648.....25052

Rules and Regulations

Federal Register
Vol. 78, No. 82
Monday, April 29, 2013

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Doc. No. AMS–FV–12–0076; FV13–932–1 IR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the California Olive Committee (Committee) for the 2013 and subsequent fiscal years from $31.32 to $21.16 per ton of assessable olives handled. The Committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective April 30, 2013. Comments received by June 28, 2013, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jerry L. Simmons, Marketing Specialist, or Rose Aguayo, Acting Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Jerry.Simmons@ams.usda.gov* or *Rose.Aguayo@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning on January 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2013 and subsequent fiscal years from $31.32 to $21.16 per ton of assessable olives.

The California olive marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California olives. They are familiar with the Committee's needs and with the costs for goods and services in their local area. Thus, they are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2012 and subsequent fiscal years, the Committee recommended, and USDA approved, an assessment rate of $31.32 per ton of assessable olives that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on December 11, 2012, and unanimously recommended 2013 fiscal year expenditures of $1,289,198 and an assessment rate of $21.16 per ton of assessable olives. In comparison, last year's budgeted expenditures were $1,197,291. The assessment rate of $21.16 is $10.16 lower than the rate currently in effect. The Committee recommended the lower assessment rate because the 2012–13 assessable olive receipts as reported by

the California Agricultural Statistics Service (CASS) are 67,355 tons, which compares to 26,944 tons in 2011–12. Olives are an alternate-bearing crop, where crop size alternates between small and large crops, resulting in a higher 2012–13 volume crop and a lower 2011–12 volume crop.

The major expenditures recommended by the Committee for the 2013 fiscal year include $333,800 for General Administration, $637,380 for Marketing Programs, $105,000 for Inspection Equipment Development, and $213,018 for Research Programs. Budgeted expenses for these items in 2012 were $333,500, $480,000, $50,000, and $333,791, respectively.

The assessment rate recommended by the Committee is based upon the actual revenue necessary to meet the anticipated 2013 fiscal year expenses, given the actual olive tonnage received by handlers during the 2012–13 crop year, and taking into consideration the potential tonnage diverted by handlers into exempt uses. Actual assessable tonnage for the 2013 fiscal year is expected to be lower than the 2012–13 crop receipts of 67,355 tons reported by CASS because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. Income derived from handler assessments will be adequate to cover budgeted expenses. Funds in the reserve will be kept within the maximum amount of one fiscal year's expenses permitted by the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA based upon a recommendation and information submitted by the Committee or upon other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or from USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2013 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of primarily small entities acting on their own behalf.

There are approximately 1,000 producers of California olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration as those having annual receipts less than $750,000 and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000. (13 CFR 121.201)

Based upon information from the industry and CASS, the average grower price for 2012 was approximately $1,150 per ton of assessable olives and total grower deliveries were 67,355 tons. Based on production, producer prices, and the total number of California olive producers, the average annual producer revenue is less than $750,000. Thus, the majority of olive producers may be classified as small entities. Neither of the handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2013 and subsequent fiscal years from $31.32 to $21.16 per ton of assessable olives, a decrease of $10.16. The Committee unanimously recommended 2013 expenditures of $1,289,198. The quantity of assessable California olives for the 2012–13 season is 67,355 tons. However, the quantity of olives actually assessed is expected to be slightly lower because some of the tonnage may be diverted by handlers to exempt outlets on which assessments are not paid. The $21.16 rate should provide an assessment income adequate to meet this year's expenses.

The major expenditures recommended by the Committee for the 2013 year include $333,800 for General Administration, $637,380 for Marketing Programs, $105,000 for Inspection Equipment Development, and $213,018 for Research Programs. Budgeted expenses for these items in 2012 were $333,500, $480,000, $50,000, and $333,791, respectively.

The decrease in the assessment rate, despite the increase in the overall budget, is possible due to a larger 2012–13 crop. Funds in the reserve will be kept within the maximum amount of one fiscal year's expenses permitted by the order.

The Committee reviewed and unanimously recommended 2013 fiscal year expenditures of $1,289,198, which included increases in Marketing Programs and Inspection Equipment Development, and a decrease in Research Programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Executive Subcommittee, Marketing Subcommittee, Inspection Subcommittee, and the Research Subcommittee. Alternative expenditure levels were discussed by these groups, based upon the relative value of various projects to the olive industry. The assessment rate of $21.16 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives, potentially exempt olives, and other pertinent factors.

A review of historical information and preliminary information indicates that the grower price for the 2012 fiscal year was approximately $1,150.03 per ton for canning fruit and $333.70 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 86.6 percent of a ton of olives are canning fruit sizes and 7.7 percent are limited use sizes, leaving the balance as unusable cull fruit. Grower revenue on 67,355 total tons of canning and limited-use sizes would be $68,811,276, given the current grower prices for those sizes. Therefore, the estimated assessment revenue for the 2013 fiscal year, as a percentage of total grower revenue, is expected to be approximately 1.9 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 11, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally,

interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Generic Vegetable Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2013 fiscal year began on January 1, 2013, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable olives handled during such fiscal year; (2) this action decreases the assessment rate for assessable olives beginning with the 2013 fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and, (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 932 is amended as follows:

PART 932—OLIVES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 932 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 932.230 is revised to read as follows:

§ 932.230 Assessment rate.

On and after January 1, 2013, an assessment rate of $21.16 per ton is established for California olives.

Dated: April 23, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09998 Filed 4–26–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS–FV–13–0010; FV13–946–1 IR]

Irish Potatoes Grown in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the State of Washington Potato Committee (Committee) for the 2013–2014 and subsequent fiscal periods from $0.003 to $0.0025 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in Washington. Assessments upon Washington potato handlers are used by the Committee to fund reasonable and necessary expenses of the program. The fiscal period begins July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective April 30, 2013. Comments received by June 28, 2013, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or Internet: *http://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov* or *GaryD.Olson@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes beginning July 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2013–2014 and subsequent fiscal periods from $0.003 to $0.0025 per hundredweight of potatoes handled.

The Washington potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011–2012 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on January 30, 2013, and unanimously recommended 2013–2014 expenditures of $37,400 and an assessment rate of $0.0025 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were $37,300. The assessment rate of $0.0025 is $0.0005 lower than the rate currently in effect. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

The major expenditures recommended by the Committee for the 2013–2014 fiscal period include $20,000 for surveillance inspection (compliance activity), $4,800 for a management agreement with the Washington State Potato Commission, $2,500 for committee expenses, and $2,500 for bonds and insurance. These budgeted expenses are the same as those approved for the 2012–2013 fiscal period.

The assessment rate recommended by the Committee was derived by multiplying anticipated shipments of Washington potatoes by various assessment rates. Applying the $0.0025 per hundredweight assessment rate to the Committee's 10,000,000 hundredweight crop estimate should provide $25,000 in assessment income. Thus, income derived from handler assessments and $100 projected interest plus, $12,300 from the Committee's monetary reserve would be adequate to cover the recommended $37,400 budget for 2013–2014. Funds in the reserve were $72,769 as of June 30, 2012. The Committee estimates a reserve of $65,969 on June 30, 2013, which would be within the maximum permitted by the order of approximately two fiscal period's operational expenses (§ 946.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2013–2014 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. (13 CFR 121.201)

During the 2011–2012 marketing year, the Committee reports that 11,018,670 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than $7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2011 was $7.90 per hundredweight. The average gross annual revenue for the 267 Washington potato producers is therefore calculated to be approximately $326,021. In view of the foregoing, the majority of Washington potato producers and handlers may be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2013–2014 and subsequent fiscal periods from $0.003 to $0.0025 per hundredweight of potatoes. The Committee also unanimously recommended 2013–2014

expenditures of $37,400. The assessment rate of $0.0025 is $0.0005 lower than the previous rate. This action will allow the Committee to reduce its financial reserve while still providing adequate funding to meet program expenses.

The quantity of assessable potatoes for the 2013–2014 fiscal period is estimated at 10,000,000 hundredweight. Thus, the $0.0025 rate should provide $25,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2013–2014 year include $20,000 for surveillance inspection (compliance activity), $4,800 for a management agreement with the Washington State Potato Commission, $2,500 for committee expense, and $2,500 for bonds and insurance. These budgeted expenses are the same as those approved for the 2012–2013 fiscal period.

The Committee discussed alternatives to this rule, including alternative expenditure levels, but determined that the recommended expenses were reasonable and necessary to adequately cover program operations. Lower assessment rates were considered, but not recommended because they would reduce the financial reserve more than desired.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2013–2014 fiscal period could average $7.65 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 2013–2014 fiscal period as a percentage of total producer revenue is 0.0327 percent.

This action decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Committee's meeting was widely publicized throughout the Washington potato industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 30, 2013, meeting was a public meeting. All entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Generic Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *www.ams.usda.gov/MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jeffrey Smutny at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2013–2014 fiscal period begins on July 1, 2013, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) this action decreases the assessment rate for assessable potatoes beginning with the 2013–2014 fiscal period; (3) handlers are aware of this action, which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

■ 1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 946.248 is revised to read as follows:

§ 946.248 Assessment rate.

On and after July 1, 2013, an assessment rate of $0.0025 per hundredweight is established for Washington potatoes.

Dated: April 23, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09997 Filed 4–26–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Docket No. AMS–FV–12–0035; FV12–987–1 FIR]

Domestic Dates Produced or Packed in Riverside County, California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, without change, an interim rule that decreased the assessment rate established for the California Date Administrative Committee (Committee) for the 2012–13 and subsequent crop years from $1.00 to $0.90 per hundredweight of dates handled. The Committee locally administers the

marketing order which regulates the handling of dates grown or packed in Riverside County, California. Assessments upon date handlers are used by the Committee to fund reasonable and necessary expenses of the program. The crop year begins October 1 and ends September 30. The interim rule was necessary because the 2012–13 crop is expected to be larger than last year's crop and the current assessment rate would generate excess assessment revenues.

DATES: Effective April 30, 2013.

FOR FURTHER INFORMATION CONTACT: Kathie M. Notoro, Marketing Specialist, or Martin Engeler, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *Kathie.Notoro@ams.usda.gov* or *Martin.Engeler@ams.usda.gov*.

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

Under the order, date handlers are subject to assessments, which provide funds to administer the order. It is intended that the assessment rate as issued herein will be applicable to all assessable dates for the entire crop year, and continue until amended, suspended, or terminated. The Committee's crop year begins on October 1 and ends on September 30.

In an interim rule published in the **Federal Register** on January 8, 2013, and effective on January 9, 2013, (78 FR 1130, Doc No. AMS–FV–12–0035; FV12–987–1 IR), § 987.339 was amended by decreasing the assessment rate established for dates because the 2012–13 crop is expected to be larger than last year's crop and the current assessment rate would generate excess assessment revenues. Assessment revenue, combined with funds from the sale of cull dates and a contribution from the California Date Commission to offset shared marketing expenses, is expected to provide sufficient funds to cover the anticipated expenses.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 79 producers of dates in the production area and 11 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000.

According to the National Agricultural Statistics Service (NASS), data for the 2011 crop year shows that about 3.68 tons, or 7,360 pounds, of dates were produced per acre. The 2011 grower price published by the NASS was $1,320 per ton, or $.66 per pound. Thus, the value of date production per acre in 2011 averaged about $4,858 (7,360 pounds times $.66 per pound). At that average price, a producer would have to farm over 154 acres to receive an annual income from dates of $750,000 ($750,000 divided by $4,858 per acre equals 154 acres). According to Committee staff, the majority of California date producers farm less than 154 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. According to data from the Committee staff, the majority of handlers of California dates may also be considered small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012–13 and subsequent crop years from $1.00 to $0.90 per hundredweight of dates handled. The Committee unanimously recommended 2012–13 expenditures of $260,000 and an assessment rate of $0.90 per hundredweight of dates, which is $0.10 lower than the rate previously in effect. The quantity of assessable dates for the 2012–13 crop year is estimated at 26,500,000 pounds. Thus, the $0.90 rate should provide $238,500 in assessment income. Income derived from handler's assessments, along with proceeds from the sale of cull dates and a contribution from the California Date Commission for shared marketing expenses should be adequate to meet the 2012–13 crop year expenses.

Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the California date industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 12, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Riverside County, California, date handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Comments on the interim rule were required to be received on or before March 11, 2013. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the

interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS–FV-12-0035-0001*.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 1130, January 8, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

PART 987—DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

■ Accordingly, the interim rule amending 7 CFR part 987, which was published at 78 FR 1130 on January 8, 2013, is adopted as a final rule, without change.

Dated: April 23, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–09999 Filed 4–26–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18033; Directorate Identifier 2004–CE–16–AD; Amendment 39–17400; AD 2004–21–08 R1]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to all Cessna Aircraft Company (Cessna) Models 190, 195 (L–126A,B,C), 195A, and 195B airplanes that are equipped with certain inboard aileron hinge brackets. The AD docket number in the preamble section and the rule portion of the AD is incorrect. Also, the statement that no comments on the notice of proposed rulemaking (NPRM) were received is incorrect. This document corrects these errors. In all other respects, the original document remains the same.

DATES: This correction is effective April 29, 2013. The effective date for AD 2004–21–08 R1 remains May 9, 2013.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gary Park, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, KS 67209; phone: (316) 946–4123; fax: (316) 946–4107; email: *gary.park@faa.gov*.

SUPPLEMENTARY INFORMATION: AD 2004–21–08 R1, amendment 39–17400 (78 FR 20227, April 4, 2013), currently requires you to repetitively inspect the affected inboard aileron hinge brackets for cracks or corrosion and replace them if cracks or corrosion is found for all Cessna Models 190, 195 (L–126A,B,C), 195A, and 195B airplanes that are equipped with certain inboard aileron hinge brackets. Replacement with aluminum brackets would terminate the need for the repetitive inspections. Future compliance requires following a revised service bulletin that clarifies the casting numbers and part numbers to be inspected.

As published, the AD docket number in the final rule headings and in the headings of the AD is incorrect.

It was incorrectly stated in the comments section that we received no comments on the NPRM (78 FR 1155, January 8, 2013). We received one supportive comment on the NPRM.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains May 9, 2013.

Correction of Non-Regulatory Text

In the **Federal Register** of April 4, 2013, AD 2004–21–08 R1; Amendment 39–17400 is corrected as follows:

On page 20227, in the first column, on line 4 in the headings of the final rule, change ''Docket No. FAA–2012–18033 * * *.'' to ''Docket No. FAA–2004–18033 * * *.''

On page 20227, in the third column, beginning on the second line under the ''Comments'' section, change the second sentence from ''We received no comments on the NPRM (78 FR 1155, January 8, 2013) or on the determination of the cost to the public.'' to ''We received one supportive comment on the NPRM (78 FR 1155, January 8, 2013) and no comments on the determination of the cost to the public.''

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of April 4, 2013, on page 20228, in the second column, the AD headings immediately following the second amendatory instruction are corrected to read as follows:

2004–21–08 R1 Cessna Aircraft Company: Amendment 39–17400; Docket No. FAA–2004–18033; Directorate Identifier 2004–CE–16–AD.

Issued in Kansas City, Missouri, on April 17, 2013.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–09496 Filed 4–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2013–0371; Airspace Docket No. 12–ANM–14]

RIN 2120–AA66

Amendment of Restricted Areas R–6703A, B, C, D; and Establishment of Restricted Areas R–6703E, F, G, H, I, and J; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the internal boundaries of R–6703 by further subdividing the airspace from the current four subareas (A through D) to ten subareas (A through J). This change is totally contained within the current outer boundaries of R–6703. The designated altitudes and time of designation remain as currently published. In addition, the name ''Fort Lewis, WA,'' in the titles of the restricted areas is changed to ''Joint Base Lewis-McChord, WA. The name of the using agency is changed from

''Commanding General, Fort Lewis, WA,'' to ''Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.'' The name changes are the result of Department of Defense organizational consolidations. In addition to better accommodating training requirements, this also allows more efficient use of airspace through increased ability to activate only those subareas actually needed for the mission.

DATES: Effective date 0901 UTC, June 27, 2013.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

Restricted Area R–6307 is located at Fort Lewis in Washington State. R–6307 is currently divided into 4 subareas, designated A, B, C, D. These subareas established in the 1950's, no longer efficiently accommodate effective training. The U.S. Army requested the FAA take action to reconfigure the internal alignment and boundaries of R–6307 by adding 6 more subareas to the restricted area, designated E, F, G, H, I, J. The changes are confined within the current restricted area boundaries and do not alter the existing geographic foot print or altitudes of the R–6703 complex. This reconfiguration will simplify the restricted area layout and eliminate much of the coordination and deconfliction actions currently required during training missions. Restructuring the restricted area complex ensures a safer and more effective training environment while allowing for more efficient airspace usage by military and civilian users.

Finally, the name of the using agency for all of the restricted areas is changed to reflect the new organizational title.

The Rule

This action realigns the internal boundaries for restricted areas R–6703A, B, C, D and establishes R–6703E, F, G, H, I and J. Additionally, it changes the title of the restricted areas from ''Fort Lewis, WA'' to ''Joint Base Lewis-McChord, WA.'' The name of the using agency for all of the restricted areas is changed from ''Commanding General, Fort Lewis, WA'' to ''Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.'' These name changes are the result of Department of Defense organizational consolidations and do not affect the use of the restricted areas.

This rule is an administrative change to realign the internal boundaries of existing restricted airspace and update the name of the using agency. These changes do not expand restricted airspace beyond the current lateral or vertical boundaries, or increase the available times of use, or alter the activities conducted within the restricted areas. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies restricted area airspace to support military requirements at Joint Base Lewis McChord, WA.

Environmental Review

The FAA has reviewed the above referenced action according to Department of Transportation Order 5610.1C, ''Procedures for Considering Environmental Impacts'' and FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' The referenced action consists of minor adjustments of established special use air space as described in FAA Order 1050.1E paragraph 401p (5), and does not require an environmental assessment. Additionally, the implementation of this action will not result in any extraordinary circumstances in accordance with Order 1050.1E paragraph 304 that warrant further environmental review.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited Areas, Restricted Areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.67 [Amended]

■ 2. § 73.67 is amended as follows:

* * * * *

1. R–6703A Fort Lewis, WA [Removed]

2. R–6703B Fort Lewis, WA [Removed]

3. R–6703C Fort Lewis, WA [Removed]

4. R–6703D Fort Lewis, WA [Removed]

5. R–6703A Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 47°03″ 07″ N., long. 122°41″ 09″ W.; to lat. 47°04″ 34″ N., long. 122°41″ 09″ W.; to lat. 47°04″ 41″ N., long. 122°38″ 19″ W.; to lat. 47°03″ 37″ N., long. 122°35″ 40″ W.; to lat. 47°03″ 15″ N., long. 122°35″ 48″ W.; to lat. 47°03″ 06″ N., long. 122°36″ 51″ W.; to lat. 47°02″ 02″ N., long. 122°37″ 33″ W.; to lat. 47°02″ 06″ N., long. 122°38″ 33″ W.; to lat. 47°02″ 14″ N., long. 122°38″ 53″ W.; to lat. 47°02″ 19″ N., long. 122°39″ 14″ W.; to lat. 47°02″ 19″ N., long. 122°39″ 37″ W.; to lat. 47°02″ 21″ N., long. 122°40″ 17″ W.; to lat. 47°02″ 38″ N., long. 122°40″ 39.″ W.; Thence via the Nisqually River to the point of beginning.

Designated altitudes. Surface to 14,000 feet MSL.

Time of designation. 0700–2300 Monday-Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using agency. Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

6. R–6703B Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 47°01″ 32″ N., long. 122°36″ 28″ W.; to lat. 47°01″ 32″ N., long. 122°36″ 51″ W.; to lat. 47°01″ 42″ N., long. 122°37″ 12″ W.; to lat. 47°02″ 02″ N., long. 122°37″ 33.″ W.; to lat. 47°03″ 06″ N., long. 122°36″ 51″ W.; to lat. 47°03″ 15″ N., long. 122°35″ 48″ W.; to the point of beginning.

Designate altitudes. Surface to 14,000 feet MSL.

Time of designation. 0700–2300 Monday-Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using agency Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

7. R–6703C Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 46°59″ 19″ N., long. 122°37″ 19″ W.; to lat. 46°59″ 15″ N., long. 122°37″ 56″ W.; Thence via the Nisqually River to lat. 47°00″ 32″ N., long. 122°38″ 59″ W.; to lat. 47°00″ 47″ N., long. 122°39″ 04″ W.; to lat. 47°00″ 57″ N., long. 122°39″ 20″ W.; to lat. 47°01″ 10″ N., long. 122°39″ 26″ W.; to lat. 47°01″ 22″ N., long. 122°39″ 45″ W.; to lat. 47°01″ 42″ N., long. 122°39″ 49″ W.; to lat. 47°02″ 00″ N., long. 122°39″ 59″ W.; to lat. 47°02″ 21″ N., long. 122°40″ 17″ W.; to lat. 47°02″ 19″ N., long. 122°39″ 37″ W.; to lat. 47°02″ 19″ N., long. 122°39″ 14″ W.; to lat. 47°02″ 14″ N., long. 122°38″ 53″ W.; to lat. 47°02″ 06″ N., long. 122°38″ 33″ W.; to lat. 47°02″ 02″ N., long. 122°37″ 33″ W.; to lat. 47°01″ 42″ N., long. 122°37″ 12″ W.; to lat. 47°01″ 32″ N., long. 122°36″ 51″ W.; to lat. 47°01″ 32″ N., long. 122°36″ 28″ W.; to the point of beginning.

Designated altitudes. Surface to 14,000 feet MSL.

Time of designation. 0700–2300 Monday-Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using agency. Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

8. R–6703D Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 46°57″ 11″ N., long. 122°38″ 51″ W.; to lat. 46°57″ 12″ N., long. 122°43″ 42″ W.; to lat. 47°03″ 07″ N., long. 122°41″ 09″ W.; to lat. 47°02″ 56″ N., long. 122°40″ 49″ W.; to lat. 47°02″ 41″ N., long. 122°40″ 48″ W.; to lat. 47°02″ 38″ N., long. 122°40″ 39″ W., to lat. 47°02″ 21″ N,. long. 122°40″ 17″ W.; to lat. 47°02″ 00″ N., long. 122°39″ 59″ W.; to lat. 47°01″ 42″ N., long. 122°39″ 49″ W.; to lat. 47°01″ 22″ N., long. 122°39″ 45″ W.; to lat. 47°01″ 10″ N., long. 122°39″ 26″ W.; to lat. 47°00″ 57″ N., long. 122°39″ 20″ W.; to lat. 47°00″ 47″ N., long. 122°39″ 04″ W.; to lat. 47°00″ 32″ N., long. 122°38″ 59″ W.; Thence via the Nisqually River to lat. 46°59″ 15″ N., long. 122°37″ 56″ W.; to lat. 46°59″ 19″ N., long. 122°37″ 19″ W.; to lat. 46°58″ 16″ N., long. 122°37″ 44″ W.; to the point of beginning.

Designation altitudes. Surface to 14,000 feet MSL.

Time of designation. 0700–2300 Monday-Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using Agency Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

9. R–6703E Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 46°57″ 11″ N., long. 122°38″ 51″ W.; to lat. 46°54″ 34″ N., long. 122°41″ 29″ W.; to lat. 46°54″ 17″ N., long. 122°43″ 36″ W.; to lat. 46°55″ 11″ N., long. 122°44″ 34″ W.; to lat. 46°57″ 12″ N., long. 122°43″ 42″ W.; to the point of beginning.

Designated altitudes. Surface to 14,000 feet MSL.

Time of designation. 0700–2300 Monday-Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using agency. Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

10. R–6703F Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 47°01″ 32″ N., long. 122°36″ 28″ W.; to lat. 47°03″ 37″ N., long. 122°35″ 40″ W.; to lat. 47°02″ 47″ N., long. 122°33″ 40″ W.; to lat. 47°02″ 43″ N., long. 122°34″ 06″ W.; to lat. 47°02″ 26″ N., long. 122°34″ 22″ W.; to lat. 47°02″ 08″ N., long. 122°34″ 38″ W.; to lat. 47°02″ 02″ N., long. 122°34″ 52″ W.; to lat. 47°01″ 57″ N., long. 122°35″ 05″ W.; to lat. 47°01″ 37″ N., long. 122°35″ 37″ W.; to lat. 47°01″ 32″ N., long. 122°36″ 05″ W.; to the point of beginning.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. 0700–2300 Monday-Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using agency. Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

11. R–6703G Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 47°01′29″ N., long. 122°34′02″ W.; to lat. 47°02′26″ N., long. 122°34′22″ W.; to lat. 47°02′43″ N., long. 122°34′06″ W.; to lat. 47°02′47″ N., long. 122°33′40″ W.; to lat. 47°02′13″ N., long. 122°32′19″ W.; to lat. 47°01′47″ N., long. 122°31′42″ W.; to lat. 47°01′28″ N., long. 122°31′42″ W.; to the point of beginning.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. 0700–2300 Monday–Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using agency. Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

12. R–6703H Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 46°59′19″ N., long. 122°37′19″ W.; to lat. 47°01′32″ N., long. 122°36′28″ W.; to lat. 47°01′32″ N., long. 122°36′05″ W.; to lat. 47°01′37″ N., long. 122°35′37″ W.; to lat. 47°01′57″ N., long. 122°35′05″ W.; to lat. 47°02′02″ N., long. 122°34′52″ W.; to lat. 47°00′45″ N., long. 122°34′52″ W.; to lat. 46°59′59″ N., long. 122°35′39″ W.; to lat. 46°59′20″ N., long. 122°36′27″ W.; to the point of beginning.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. 0700–2300 Monday–Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using agency. Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

13. R–6703I Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 46°59′59″ N., long. 122°35′39″ W.; to lat. 47°00′45″ N., long. 122°34′52″ W.; to lat. 47°02′02″ N., long. 122°34′52″ W.; to lat. 47°02′08″ N., long. 122°34′38″ W.; to lat. 47°02′26″ N., long. 122°34′22″ W.; to lat. 47°01′29″ N., long. 122°34′02″ W.; to lat. 47°01′28″ N., long. 122°31′42″ W.; to lat. 47°00′59″ N., long. 122°31′41″ W.; to lat. 47°00′41″ N., long. 122°33′16″ W.; to lat. 47°00′29″ N., long. 122°33′20″ W.; to the point of beginning.

Designated altitudes. Surface to 5,000 feet MSL.

Time of designation. 0700–2300 Monday–Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using agency. Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

14. R–6703J Joint Base Lewis-McChord, WA [New]

Boundaries. Beginning at lat. 46°58′16″ N., long. 122°37′44″ W.; to lat. 46°59′19″ N., long. 122°37′19″ W.; to lat. 46°59′20″ N., long. 122°36′27″ W.; to the point of beginning.

Designated altitudes Surface to 5,000 feet MSL.

Time of designation. 0700–2300 Monday–Friday; other times by NOTAM two hours in advance.

Controlling agency. FAA, Seattle TRACON.

Using agency. Joint Base Garrison Commander, Joint Base Lewis-McChord, WA.

* * * * *

Issued in Washington, DC on April 22, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–10040 Filed 4–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0064]

RIN 1625–AA11

Regulated Navigation Area, Gulf of Mexico; Mississippi Canyon Block 20, South of New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule and request for comments.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) in the Mississippi Canyon Block 20 in the Gulf of Mexico. This RNA is needed to protect the subsurface monitoring and collection dome system

above a leaking wellhead from the potential hazards of vessels anchoring, mooring or loitering on or near the oil and gas discharge area. Deviation from this rule is prohibited unless specifically authorized by the Captain of the Port New Orleans, or his designated representative.

DATES: This rule is enforced with actual notice from April 4, 2013, until April 29, 2013. This rule is effective in the Code of Federal Regulations on April 29, 2013. Comments and related material must be received by the Coast Guard on or before July 29, 2013.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2013–0064. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays.

You may submit comments, identified by docket number, using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* (202) 493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, excluding Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Brandon Sullivan, Coast Guard Sector New Orleans; telephone 504–365–2281, email *Brandon.J.Sullivan@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not plan on holding a public meeting, but you may submit a request for one prior to the comment period ending, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid in this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

The Coast Guard is issuing this interim rule without prior notice and opportunity to comment, pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.''

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because delaying issuance of this rule would be impracticable and contrary to public interest. After installation of a containment dome, any vessels anchoring, mooring or loitering in the area covered by this rule have the potential to cause grave environmental impacts and greatly reduce the effectiveness of the containment and monitoring system for the affected wellhead. The necessity of this dome and RNA were unexpected.

Anchoring, mooring or loitering in the area covered by the rule could potentially cause structural damage and failure to the containment dome,

associated hoses and systems, wellheads, well piping system and closure valves, causing the discharge of crude oil and gas into the Gulf of Mexico. The protection of this area is crucial in reducing negative impacts to wildlife and to protect the subsea collection and monitoring system around a damaged subsea oil well.

Under 5 U.S.C. 553(d)(3), for the same reasons as discussed above, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. A 30 day delay in this rule's effective date would be impracticable and contrary to the public interest in reducing the potential catastrophic impacts to the environment and wildlife from a system failure.

The Coast Guard will, however, review all comments submitted pertaining to this interim rule, and will consider revising the RNA to reflect any comments deemed pertinent and necessary by the Coast Guard before a final rule is issued.

C. Basis and Purpose

The Coast Guard's basis for this rule includes 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1. The purpose of the rule is to establish a regulated navigation area for the protection of oil spill containment measures in the Gulf of Mexico.

On September 16, 2004, a mudslide resulted from Hurricane Ivan's storm surge that toppled the Mississippi Canyon (MC) 20 Platform A. The platform's wells were covered by more than 100-feet of mud and sediment. As a result of structural damage, plumes containing crude oil and gas have been discharging into the Gulf of Mexico, creating a sheen on the surface of the water.

The responsible party for this incident has undertaken an operation to install a containment dome over the affected area, which would catch the oil rising from the sea floor. Many vessels continue to operate in the affected area. Anchoring, mooring, or loitering in the area above the containment dome could potentially damage the dome, or reduce its effectiveness. Therefore, regulating navigation in this area is necessary to protect the collection and subsurface monitoring system and to reduce the potentially negative impacts to the environment from the pluming oil.

D. Discussion of the Interim Rule

This rule creates a regulated navigation area of a 300-foot diameter centered at 28°52′17″ N, 089°10′50″ W, and extending the entire water column from the surface to the sea floor. Vessels may transit freely through this area, but must not anchor, moor, or loiter, unless they have been granted special authorization by the Captain of the Port, New Orleans.

E. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The impacts on navigation users are expected to be minimal because the enforcement of this RNA does not prohibit vessels from transiting through the area described above. This RNA prohibits only the anchoring, mooring or loitering of vessels within the 300-foot diameter section of the protected area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to anchor, moor, or loiter in the regulated area. This regulated navigation area will not have a significant economic impact on a substantial number of small entities for the following reasons. The establishment of this RNA encompasses a limited area of the Gulf of Mexico and there will be minimal to no impact to commercial vessel traffic. This RNA only prohibits vessels from mooring, anchoring or loitering in the area described above. Transiting through the above described area is authorized and notification of the enforcement of this RNA will be disseminated to the marine community through broadcast notice to mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small business entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a regulated navigation area of a 300-foot diameter, extending the entire water column from the water surface to the seabed. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (Water), Reporting and recordkeeping requirements, Security measurers, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.840 to read as follows:

§ 165.840 Regulated Navigation Area, Gulf of Mexico: Mississippi Canyon Block 20, South of New Orleans, LA.

(a) *Effective date.* This section is effective on April 4, 2013.

(b) *Location.* The following area is a Regulated Navigation Area: A 300-foot diameter area at the water surface centered on the following coordinates: 28°52′17″ N 089°10′50″ W, and extending the entire water column from the surface to the seabed.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.13 of this part, all vessels are prohibited from anchoring, mooring or loitering in the above described area except as authorized by the Captain of the Port, New Orleans.

(2) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted by telephone at (504) 365–2200.

Dated: April 4, 2013.

R. A. Nash,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 2013–09994 Filed 4–26–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0595; FRL–9790–3]

Approval and Promulgation of Implementation Plans; Ohio; Volatile Organic Compound Emission Control Measures for the Cleveland Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving into the Ohio State Implementation Plan (SIP), several volatile organic compound (VOC) rules that were submitted by the Ohio Environmental Protection Agency (Ohio EPA) on June 1, 2011. These rules, which include the source categories covered by the Control Technique Guideline (CTG) documents issued in 2008, as well as several other miscellaneous rule revisions, will help Ohio's effort to attain the 2008 ozone standard. These rules are being approved because they are consistent with the CTG documents issued by EPA in 2008, and satisfy the reasonably available control technology (RACT) requirements of the Clean Air Act (Act). EPA proposed these rules for approval on May 25, 2012, and received no comments.

DATES: This final rule is effective on May 29, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0595. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly

available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What public comments were received on the proposed approval and what is EPA's response?
II. What action is EPA taking today and what is the purpose of this action?
III. Statutory and Executive Order Reviews

I. What public comments were received on the proposed approval and what is EPA's response?

EPA proposed these rules for approval on May 25, 2012 (77 FR 31265), and received no comments.

II. What action is EPA taking today and what is the purpose of this action?

EPA is approving into the Ohio SIP several new VOC and amended VOC rules under Chapter 3745–21 of the Ohio Administrative Code (OAC). These include new fiberglass boat manufacturing, miscellaneous industrial adhesives, and automobile and light-duty truck assembly coatings rules, which are consistent with the CTGs issued in 2008, as well as revisions to definitions and rules for the control of VOC emissions from stationary sources, storage of volatile organic liquids, industrial cleaning solvents, and flatwood paneling coatings. These rules are approvable because they are consistent with the CTG documents issued by EPA in 2008, and satisfy the RACT requirements of the Act. These VOC rules will help Ohio's effort to attain the 2008 ozone standard.

EPA is also approving into the Ohio SIP amendments to OAC 3745–72, which contain its Low Reid Vapor Pressure Fuel Requirements, so that it is consistent with EPA requirements regarding special provisions for alcohol blends.

III. Statutory and Executive Order Reviews

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 4, 2013.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.1870 is amended by adding paragraph (c)(158) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(158) On June 1, 2011, the Ohio Environmental Protection Agency (Ohio EPA) submitted several volatile organic

compound (VOC) rules for approval into the Ohio State Implementation Plan. These rules include the source categories covered by the Control Technique Guideline (CTG) documents issued in 2008, as well as several other miscellaneous rule revisions.

(i) Incorporation by reference.

(A) Ohio Administrative Code Rule 3745–21–01 ''Definitions.'', effective May 12, 2011.

(B) Ohio Administrative Code Rule 3745–21–09 ''Control of emissions of volatile organic compounds from stationary sources and perchloroethylene from dry cleaning facilities.'', effective May 12, 2011, except for paragraph (U)(1)(h).

(C) Ohio Administrative Code Rule 3745–21–21 ''Storage of volatile organic liquids in fixed roof tanks and external floating roof tanks.'', effective May 12, 2011.

(D) Ohio Administrative Code Rule 3745–21–23 ''Control of volatile organic compound emissions from industrial solvent cleaning operations.'', effective May 12, 2011.

(E) Ohio Administrative Code Rule 3745–21–24 ''Flat wood paneling coatings.'', effective May 12, 2011.

(F) Ohio Administrative Code Rule 3745–21–27 ''Boat manufacturing.'', effective May 12, 2011.

(G) Ohio Administrative Code Rule 3745–21–28 ''Miscellaneous industrial adhesives and sealants'', effective May 12, 2011.

(H) Ohio Administrative Code Rule 3745–21–29 ''Control of volatile organic compound emissions from automobile and light-duty truck assembly coating operations, heavier vehicle assembly coating operations, and cleaning operations associated with these coating operations.'', effective May 12, 2011.

(I) Ohio Administrative Code Rule 3745–72–02 ''Definitions.'', effective May 12, 2011.

(J) Ohio Administrative Code Rule 3745–72–05 ''Liability.'', effective May 12, 2011.

(K) Ohio Administrative Code Rule 3745–72–06 ''Defenses.'', effective May 12, 2011.

(L) May 2, 2011, ''Director's Final Findings and Orders,'' signed by Scott J. Nally, Director, Ohio Environmental Protection Agency.

[FR Doc. 2013–08691 Filed 4–26–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0965; FRL–9806–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Volatile Organic Compounds Emissions Reductions Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the District of Columbia. This SIP revision consists of amendments to Chapters 1 and 7 of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR) for the Control of Volatile Organic Compounds (VOC) to meet the requirement to adopt reasonably available control technology (RACT) for sources as recommended by the Ozone Transport Commission (OTC) model rules and EPA's Control Techniques Guidelines (CTG) standards. This SIP revision also includes negative declarations for various VOC source categories. EPA is approving the regulation changes and the negative declarations in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on May 29, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0965. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia. Department of the Environment, Air Quality Division, 1200 1st Street NE., 5th floor, Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Summary of SIP Revision

On February 11, 2013 (78 FR 9648), EPA published a notice of proposed rulemaking (NPR) for the District of Columbia. The NPR proposed approval of amendments to Chapters 1 and 7 of Title 20 (Environment) of the DCMR for the control of VOCs to meet the requirement to adopt RACT and negative declarations for various VOC source categories. The formal SIP revision was submitted by the District of Columbia on January 26, 2010, March 24, 2011, and March 15, 2012. The SIP revision amends the District's regulations to impose the VOC RACT requirements as recommended by OTC's model rules for consumer products, adhesives and sealants, architectural and industrial maintenance, portable fuel containers and spouts, and solvent cleaning and also include VOC RACT requirements consistent with EPA's CTGs for flexible packaging and printing, large appliance coatings, metal furniture coatings, and miscellaneous metal products and plastic parts coatings, lithographic and letterpress printing, miscellaneous industrial adhesives, and industrial cleaning solvents. The SIP revision also consists of negative declarations for the following VOC source categories: Auto and Light-duty Truck Assembly Coatings; Fiberglass Boat Manufacturing Materials; Paper, Film and Foil Coatings; and Flatwood Paneling. EPA received no adverse comments on the NPR to approve the District of Columbia's SIP revision. A more complete explanation of the amendments and the rationale for EPA's proposed action is explained in the technical support document and the NPR in support of this final rulemaking and will not be restated here.

II. Final Action

EPA is approving the District of Columbia's SIP revisions adopting VOC RACT requirements for various source categories. EPA is also approving the District's negative declarations pursuant to section 182(b)(2)(A) of the CAA for those CTG categories where no sources are located in the District.

III. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the

CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 28, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving the District's amendments to regulations for the control of VOCs and negative declarations for various VOC source categories may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: April 16, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

■ 2. In § 52.470,

■ a. The table in paragraph (c) is amended by:

■ i. Revising the entry for Section 100.

■ ii. Revising the entry for Section 199.

■ iii. Revising the entry for Section 700.

■ iv. Removing the entries for Sections 707 and 708.

■ v. Revising the entry for Section 710.

■ vi. Adding an entry for Section 714 in numerical order.

■ vii. Revising the entries for Sections 715, 716, and 719 through 737.

■ viii. Removing the entries for Sections 738, 739, 740, 741, and 742.

■ ix. Revising the entries for Sections 743 through 749.

■ x. Removing the entry for Section 750.

■ xi. Revising the entries for Sections 751 through 754.

■ xii. Adding entries for Sections 755 through 758, 763 through 771, and 773 through 778 in numerical order.

■ xiii. Revising the entry for Section 799.

■ b. The table in paragraph (e) is amended by revising the entry for Negative Declarations—VOC Source Categories.

The added and revised text reads as follows:

§ 52.470 Identification of plan.

* * * * *

(c) *** * ***

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
District of Columbia Municipal Regulations (DCMR), Title 20—Environment				
Chapter 1 General				
Section 100	Purpose, Scope and Construction	12/30/11	4/29/13 *[Insert page number where the document begins].*	Paragraph 100.4 is revised.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
* *	*	*	* *	*
Section 199	Definitions and Abbreviations	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Removes the following definitions and terms: ''Control technique guideline,'' ''Cylinder-wipe,'' ''Gravure,'' ''Heatset,'' ''Inking cylinder,'' ''Intaglio,'' ''Letterpress,'' ''Letterset,'' ''Offset printing process,'' ''Paper-wipe,'' ''Photochemically reactive solvent,'' ''Plate,'' ''Printing,'' ''Printing operation,'' ''Printing unit,'' ''Water-based solvent,'' and ''Wipe cleaning.'' Repeals ''Volatile organic compounds'' and replaced it with a new definition for VOCs.
* *	*	*	* *	*
Chapter 7 Volatile Organic Compounds				
Section 700	Miscellaneous Volatile Organic Compounds.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title changed.
* *	*	*	* *	*
Section 710	Intaglio, Flexographic, and Rotogravure Printing.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	
* *	*	*	* *	*
Section 714	Control Techniques Guidelines	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 715	Major Source and Case-By-Case Reasonably Available Control Technology (RACT).	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 716	Offset Lithography and Letterpress Printing.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
* *	*	*	* *	*
Section 719	Consumer Products—General Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	
Section 720	Consumer Products—VOC Standards.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	
Section 721	Consumer Products—Exemptions from VOC Standards.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	
Section 722	Consumer Products—Registered Under FIFRA.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	
Section 723	Consumer Products—Products Requiring Dilution.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	
Section 724	Consumer Products—Ozone Depleting Compounds.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	
Section 725	Consumer Products—Aerosol Adhesives.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 726	Consumer Products—Antiperspirants Or Deodorants.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	
Section 727	Consumer Products—Contact Adhesives, Electronic Cleaners, Footwear And Leather Care Products, And General Purpose Degreasers.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 728	Consumer Products—Adhesive Removers, Electrical Cleaners, And Graffiti Removers.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 729	Consumer Products—Solid Air Fresheners And Toilet/Urinal Care Products.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 730	Consumer Products—Charcoal Lighter Materials.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 731	Consumer Products—Floor Wax Strippers.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 732	Consumer Products—Labeling Of Contents.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 733	Consumer Products—Reporting Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 734	Consumer Products—Test Methods.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 735	Consumer Products—Alternative Control Plans.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 736	Consumer Products—Innovative Products Exemption.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 737	Consumer Products—Variance Requests.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 743	Adhesives and Sealants—General Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 744	Adhesives and Sealants—VOC Standards.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 745	Adhesives and Sealants—Exemptions and Exceptions.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 746	Adhesives and Sealants—Administrative Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 747	Adhesives and Sealants—Compliance Procedures and Test Methods.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 748	Adhesives and Sealants—Container Labeling.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 749	Adhesives and Sealants—Application Methods.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 751	Portable Fuel Containers and Spouts—General Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 752	Portable Fuel Containers and Spouts—Performance Standards and Test Procedures.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 753	Portable Fuel Containers and Spouts—Exemptions.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.
Section 754	Portable Fuel Containers and Spouts—Labeling Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Title Changed.

EPA-APPROVED DISTRICT OF COLUMBIA REGULATIONS—Continued

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
Section 755	Portable Fuel Containers and Spouts—Certification and Compliance Test Procedures.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 756	Portable Fuel Containers and Spouts—Enforcement.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 757	Portable Fuel Containers and Spouts—Innovative Product Exemption.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 758	Portable Fuel Containers and Spouts—Variance.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 763	Solvent Cleaning—General Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 764	Solvent Cleaning—Cold Cleaning	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 765	Solvent Cleaning—Batch Vapor Cleaning.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 766	Solvent Cleaning—In-Line Vapor Cleaning.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 767	Solvent Cleaning—Airless and Air-Tight Cleaning.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 768	Solvent Cleaning—Alternative Compliance.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 769	Solvent Cleaning—Recordkeeping and Monitoring.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 770	Miscellaneous Industrial Solvent Cleaning Operations.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 771	Miscellaneous Cleaning and VOC Materials Handling Standards.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 773	Architectural and Industrial Maintenance Coating—General Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 774	Architectural and Industrial Maintenance Coating—Standards.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 775	Architectural and Industrial Maintenance Coating—Exemptions.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 776	Architectural and Industrial Maintenance Coating—Labeling Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 777	Architectural and Industrial Maintenance Coating—Reporting Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 778	Architectural and Industrial Maintenance Coating—Testing Requirements.	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Section Added.
Section 799	Definitions	12/30/11	4/29/13 *[Insert page number where the document begins]*.	Revised to update the definitions, terms, and the section title.
*	*	*	*	*	*	*

* * * * * (e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Negative Declarations—VOC Source Categories.	Metropolitan Washington ozone nonattainment area.	4/8/93, 9/4/97	10/27/99, 64 FR 57777	52.478(a), 52.478(b).
Negative Declarations—VOC Source Categories.	Metropolitan Washington ozone nonattainment area.	1/26/10, 3/24/11	4/29/13 [*Insert* ***Federal Register*** *page number where the document begins and date].*	52.478(c).
*	*	*	*	*

■ 3. Section 52.478 is amended by adding paragraph (c) to read as follows:

§ 52.478 Rules and regulations.

* * * * *

(c) On March 24, 2011, the District of Columbia submitted a letter to EPA declaring that there are no sources located in the District which belong to the following VOC categories:

(1) Auto and Light-duty Truck Assembly Coatings;

(2) Fiberglass Boat Manufacturing Materials;

(3) Paper, Film and Foil Coatings;

(4) Flatwood Paneling.

[FR Doc. 2013–09937 Filed 4–26–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2011–0111; FRL–9800–9]

RIN–2060–AQ84

Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—Fire Suppression and Explosion Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the U.S. Environmental Protection Agency's Significant New Alternatives Policy program, this action lists C7 Fluoroketone as an acceptable substitute, subject to narrowed use limits, for ozone-depleting substances used as streaming agents in the fire suppression and explosion protection sector. The program implements Section 612 of the Clean Air Act, as amended in 1990, which requires the Agency to evaluate substitutes and find them acceptable where they pose comparable or lower overall risk to human health and the environment than other available substitutes.

DATES: This rule is effective on May 29, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0111. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Bella Maranion, Stratospheric Protection Division, Office of Atmospheric Programs (6205J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 343–9749; fax number: (202) 343–2363; email address: *maranion.bella@epa.gov*.

SUPPLEMENTARY INFORMATION: The regulations implementing the Significant New Alternatives Policy (SNAP) program are codified at 40 CFR part 82, subpart G. The appendices to subpart G list substitutes for ozone-depleting substances (ODSs) for specific end uses as unacceptable or as acceptable with certain restrictions imposed on their use. In addition, a list of acceptable substitutes without restrictions is available at *http://www.epa.gov/ozone/snap/lists/index.html*. This final rule will add a new fire suppression agent to the SNAP list of acceptable substitutes in the appendices to subpart G and specifically to the list of substitutes for halon 1211 for streaming uses. This action does not place any significant burden on the regulated community but lists as acceptable, subject to narrowed use limits, a new halon substitute. The restrictions will ensure that this substitute will not pose a greater risk to human health or the environment than other available or potentially available substitutes in the fire suppression end use.

This final rule finds C7 Fluoroketone acceptable subject to narrowed use limits as a substitute for halon 1211 for use as a streaming agent in portable fire extinguishers in nonresidential applications. Halons are chemicals that were once widely used in the fire protection sector but have been banned from production in the U.S. since 1994 because their emissions into the atmosphere are highly destructive to the stratospheric ozone layer. This action will provide users that need specialized fire protection applications with more alternatives to the use of halons. Businesses that may be regulated, either through manufacturing, distribution, installation and servicing, or use of the fire suppression equipment containing the substitutes are listed in the table below:

TABLE 1—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE

Category	NAICS Code	Description of regulated entities
Construction	238210	Alarm system (e.g., fire, burglar), electric, installation only.
Manufacturing	325998	Fire extinguisher chemical preparations manufacturing.

TABLE 1—POTENTIALLY REGULATED ENTITIES, BY NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM (NAICS) CODE—Continued

Category	NAICS Code	Description of regulated entities
Manufacturing	332919	Nozzles, fire fighting, manufacturing.
Manufacturing	334290	Fire detection and alarm systems manufacturing.
Manufacturing	336611	Shipbuilding and repairing.
Manufacturing	339999	Fire extinguishers, portable, manufacturing.
Manufacturing	336411	Aircraft manufacturing.
Manufacturing	336413	Other aircraft parts and auxiliary equipment manufacturing.

This table is not intended to be exhaustive, but rather a guide regarding entities likely to be regulated by this action. If you have any questions about whether this action applies to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Table of Contents

I. Section 612 Program
A. Statutory Requirements
B. Regulatory History
II. Listing Decision: Fire Suppression and Explosion Protection Streaming Application: C7 Fluoroketone—Acceptable Subject to Narrowed Use Limits
III. Response to Public Comment
IV. Final Action
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132:Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act (CAA) requires EPA to develop a program for evaluating alternatives to ozone-depleting substances. EPA refers to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of Section 612 are:

• *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl chloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses and to publish a corresponding list of acceptable alternatives for specific uses. The list of acceptable substitutes is found at *http://www.epa.gov/ozone/snap/lists/index.html*, and the lists of ''unacceptable,'' ''acceptable subject to use conditions,'' and ''acceptable subject to narrowed use limits'' substitutes are found in the appendices to subpart G of 40 CFR part 82.

• *Petition Process*—Section 612(d) grant the right to any person to petition EPA to add a substitute to, or delete a substitute from, the lists published in accordance with Section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, EPA must publish the revised lists within an additional six months.

• *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the original rulemaking (59 FR 13044) which established the process for administering the SNAP program and issued EPA's first lists identifying acceptable and unacceptable substitutes in the major industrial use sectors (subpart G of 40 CFR part 82). These sectors include: Refrigeration and air-conditioning; foam blowing; solvents cleaning; fire suppression and explosion protection; sterilants; aerosols; adhesives, coatings and inks; and tobacco expansion. These sectors comprise the principal industrial sectors that historically consumed the largest volumes of ODS.

Section 612 of the CAA requires EPA to list as acceptable those substitutes that do not present a significantly greater risk to human health and the environment as compared with other substitutes that are currently or potentially available.

Under the SNAP regulations, anyone who plans to market or produce a substitute to replace a class I substance or class II substance in one of the eight major industrial use sectors must provide notice to the Agency, including health and safety information on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. 40 CFR 82.176(a). This requirement applies to the persons planning to introduce the substitute into interstate commerce,[1] which typically are

[1] As defined at 40 CFR 82.104, ''interstate commerce'' means the distribution or transportation of any product between one state, territory, possession or the District of Columbia, and another state, territory, possession or the District of Columbia, or the sale, use or manufacture of any product in more than one state, territory, possession or District of Columbia. The entry points for which a product is introduced into interstate commerce are the release of a product from the facility in which the product was manufactured, the entry into

chemical manufacturers but may include importers, formulators, or end-users when they are responsible for introducing a substitute into commerce.[2] The 90-day SNAP review process begins once EPA receives the submission and determines that the submission includes complete and adequate data (40 CFR 82.180(a)). As required by the CAA, the SNAP regulations, 40 CFR 82.174(a), prohibit the introduction of a substitute into interstate commerce earlier than 90 days after notice has been provided to the Agency.

The Agency has identified four possible decision categories for substitutes that are submitted for evaluation: acceptable; acceptable subject to use conditions; acceptable subject to narrowed use limits; and unacceptable [3] (40 CFR 82.180(b)). Use conditions and narrowed use limits are both considered ''use restrictions'' and are explained below. Substitutes that are deemed acceptable with no use restrictions (no use conditions or narrowed use limits) can be used for all applications within the relevant end-uses within the sector. Substitutes that are acceptable subject to use restrictions may be used only in accordance with those restrictions.

After reviewing a substitute, the Agency may determine that a substitute is acceptable only if certain conditions in the way that the substitute is used are met to minimize risks to human health and the environment. EPA describes such substitutes as ''acceptable subject to use conditions.'' Entities that use these substitutes without meeting the associated use conditions are in violation of EPA's SNAP regulations. 40 CFR 82.174(c).

For some substitutes, the Agency may permit a narrow range of use within an end-use or sector. For example, the Agency may limit the use of a substitute to certain end-uses or specific applications within an industry sector. EPA describes these substitutes as ''acceptable subject to narrowed use limits.'' A person using a substitute that is acceptable subject to narrowed use limits in applications and end-uses that are not consistent with the narrowed use limit is using the substitute in an unacceptable manner and is in violation of section 612 of the CAA and EPA's SNAP regulations. 40 CFR 82.174(c).

The Agency publishes its SNAP program decisions in the **Federal Register**. EPA first publishes decisions concerning substitutes that are deemed acceptable subject to use restrictions (use conditions and/or narrowed use limits), or substitutes deemed unacceptable, as proposed rulemakings to allow the public opportunity to comment, before publishing final decisions.

In contrast, EPA publishes decisions concerning substitutes that are deemed acceptable with no restrictions in ''notices of acceptability,'' rather than as proposed and final rules. As described in the preamble to the rule initially implementing the SNAP program in the **Federal Register** at 59 FR 13044 on March 18, 1994, EPA does not believe that rulemaking procedures are necessary to list alternatives that are acceptable without restrictions because such listings neither impose any sanction nor prevent anyone from using a substitute.

Many SNAP listings include ''Comments'' or ''Further Information'' to provide additional information on substitutes. Since this additional information is not part of the regulatory decision, these statements are not binding for use of the substitute under the SNAP program. However, regulatory requirements so listed are binding under other regulatory programs (e.g., worker protection regulations promulgated by the U.S. Occupational Safety and Health Administration (OSHA)). The ''Further Information'' classification does not necessarily include all other legal obligations pertaining to the use of the substitute. While the items listed are not legally binding under the SNAP program, EPA encourages users of substitutes to apply all statements in the ''Further Information'' column in their use of the substitute. In many instances, the information simply refers to sound operating practices that have already been identified in existing industry and/or building codes and standards. Thus, many of the comments, if adopted, would not require the affected user to make significant changes in existing operating practices.

For copies of the comprehensive SNAP lists of substitutes or additional information on SNAP, refer to EPA's Ozone Layer Protection Web site at *www.epa.gov/ozone/snap/index.html*. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking in the **Federal Register** at 59 FR 13044 on March 18, 1994, codified at 40 CFR part 82, subpart G. A complete chronology of SNAP decisions and the appropriate citations are found at *http://www.epa.gov/ozone/snap/chron.html*.

II. Listing Decision: Fire Suppression and Explosion Protection Streaming

Application: C7 Fluoroketone—Acceptable Subject to Narrowed Use Limits

EPA's decision: EPA finds C7 Fluoroketone acceptable subject to narrowed use limits as a substitute for halon 1211 for use as a streaming agent. The narrowed use limits require that C7 Fluoroketone be used only in nonresidential applications.

C7 Fluoroketone is also known as C7 FK or FK–6–1–14. This substitute is a blend of two isomers, 3-pentanone,1,1,1,2,4,5,5,5-octafluoro-2,4-bis(trifluoromethyl) (Chemical Abstracts Service Registry Number [CAS Reg. No.] 813–44–5) and 3-hexanone,1,1,1,2,4,4,5,5,6,6,6-undecafluoro-2-(trifluoromethyl) (CAS Reg. No. 813–45–6). You may find the submission under docket EPA–HQ–OAR–2011–0111 at *http://www.regulations.gov*.

Environmental information: C7 Fluoroketone has zero ODP and a GWP of approximately 1. Therefore, C7 Fluoroketone is not expected to pose any significant adverse impact on the ozone layer or climate.

The physicochemical properties of the majority of halon substitutes make it unlikely that the substitutes would be released to surface water as a result of use. In the case of C7 Fluoroketone, the proposed substitute is insoluble in water and readily volatilizes. Thus, EPA expects that all of the constituents would rapidly vaporize during expulsion from the container, would not be likely to settle, and therefore would be unlikely to lead to surface water contamination or generation of solid waste.

C7 Fluoroketone has not been exempted as a volatile organic compound (VOC) under the CAA (40 CFR 51.100(s)). VOC emissions from the production of portable extinguishers charged with C7 Fluoroketone are controlled through standard industry practices, and as such, emissions from manufacture of units are likely to be minimal. An assessment was performed to compare the annual VOC emissions from use of C7 Fluoroketone in portable extinguishers in one year to other anthropogenic sources of VOC emissions. This assessment is available in docket EPA–HQ–OAR–2011–0111 under the name, ''Risk Screen on

a warehouse from which the domestic manufacturer releases the product for sale or distribution, and at the site of United States Customs clearance.

[2] As defined at 40 CFR 82.172, ''end-use'' means processes or classes of specific applications within major industrial sectors where a substitute is used to replace an ODS.

[3] The SNAP regulations also include ''pending,'' referring to submissions for which EPA has not reached a determination, under this provision.

Substitute for Halon 1211 as a Streaming Agent in Portable Fire Extinguishers Substitute: C7 Fluoroketone.'' This assessment finds that even if the entire portion for streaming agent applications of the allowable quantity of C7 FK produced by the submitter in one year was all released to the atmosphere (extremely unlikely), the resulting VOC emissions would be approximately equal to 3.0×10^{-2} percent of annual VOC emissions caused by fires,[4] or only about 1.1×10^{-3} percent of all annual anthropogenic VOC emissions.[5] The environmental impacts of these VOCs are not considered a significant risk to local air quality.

Toxicity and exposure data: Inhalation of C7 Fluoroketone could cause respiratory tract irritation and symptoms may include cough, sneezing, nasal discharge, headache, hoarseness, and nose and throat pain. Contact with the eyes and/or skin during product use is not expected to result in significant irritation. Ingestion of C7 Fluoroketone is not expected to cause health effects, and there is no anticipated need for first aid if C7 Fluoroketone is ingested. The potential health effects of C7 Fluoroketone can be minimized by following the exposure guidelines and recommendations for ventilation and personal protective equipment (PPE) outlined in the Material Safety Data Sheet (MSDS) and discussed further below.

EPA evaluated occupational and general population exposure at manufacture and at end use to ensure that the use of C7 Fluoroketone will not pose unacceptable risks to workers or the general public. This risk screen is available in docket EPA–HQ–OAR–2011–0111 under the name, ''Risk Screen on Substitute for Halon 1211 as a Streaming Agent in Portable Fire Extinguishers Substitute: C7 Fluoroketone.''

EPA is providing the following additional information regarding use of C7 Fluoroketone as a streaming agent in nonresidential applications. Appropriate protective measures should be taken and proper training administered for the manufacture, clean-up and disposal of this product. For this new chemical, the manufacturer developed an acceptable exposure limit (AEL) for the workplace set at a level believed to protect from chronic adverse health effects those workers who are regularly exposed, such as in the manufacturing or filling processes. EPA reviewed the submitter's supporting data and accepts the manufacturer's AEL for C7 Fluoroketone of 225 ppm over an 8-hour time-weighted average.[6] EPA recommends the following for establishments filling canisters to be used in streaming applications:

—adequate ventilation should be in place;

—all spills should be cleaned up immediately in accordance with good industrial hygiene practices; and

—training for safe handling procedures should be provided to all employees that would be likely to handle the containers of the agent or extinguishing units filled with the agent.

EPA anticipates that C7 Fluoroketone will be used consistent with the recommendations specified in the manufacturer's MSDS.

EPA recommends that users of C7 Fluoroketone as a streaming agent act in accordance with the latest edition of NFPA Standard 10 for Portable Fire Extinguishers. We expect that users will be able to meet the recommended workplace exposure limit and address potential health risks by following the above recommendations, using the substitute in accordance with the manufacturer's MSDS, and following other safety precautions common to the fire protection industry.

Comparison to other fire suppressants: C7 Fluoroketone is not ozone-depleting with a GWP of approximately 1 in contrast to halon 1211 (with an ODP of 7.1 and a GWP of 1890), the ODS which it replaces. Compared to other substitutes for halon 1211, such as HCFC Blend B (with ODP of roughly 0.01 and GWP of roughly 80), HFC–227ea (with ODP of 0 and GWP of 3220), and HFC–236fa (with an ODP of 0 and GWP of 9810), C7 Fluoroketone has a similar or less significant impact on the ozone layer and climate. Risk to the general population is expected to be negligible provided because under the narrowed use limits the substitute is not approved for use in residential applications. Occupational exposure should not pose a problem if use is in accordance with the manufacturer's MSDS and other precautions normally used in the fire protection industry.

[4] Based on 2010 projections calculated using 2008 EPA annual VOC emissions data for residential wood burning and agricultural field burning (EPA 2008 and EPA 2011) and ICF assumptions.

[5] Based on 2010 projections calculated using 2008 EPA annual VOC emissions data (EPA 2009) and ICF assumptions.

[6] ''Determination of an AEL for C7 Fluoroketone (C7 FK),'' Appendix A to Risk Screen on Substitute for Halon 1211 as a Streaming Agent in Portable Fire Extinguishers Substitute: C7 Fluoroketone. Available in docket EPA–HQ–OAR–2011–0111.

III. Response to Public Comment

The EPA published in the **Federal Register** at 77 FR 58035 on September 19, 2012, a direct final rule and a companion proposed rule issuing listings for three fire suppressants under EPA's SNAP program. Because EPA received an adverse comment concerning the fire suppressant C7 Fluoroketone, EPA withdrew that part of the direct final rule that listed C7 Fluoroketone at 77 FR 74381 on December 19, 2012. This section summarizes EPA's response to the comment received on the proposed rule. The comment as well as a late comment from the manufacturer of C7 Fluoroketone and additional supporting documents used for EPA's response can be found in docket EPA–HQ–OAR–2011–0111.

Comments: A commenter questioned the potential toxicity and environmental impacts of C7 Fluoroketone based on the ability of some other fluorinated ketones to react in water to form active perfluorinated compounds. The commenter indicates concern that the reactivity of perfluorinated ketones in water, particularly in tissues in which there is a lung:blood air interface (e.g., nose, sinus, trachea along an inhalation portal of entry), may pose significant risks to individuals breathing the compound due to interference with proper oxygenation of the blood and/or lung edema. The commenter also stated that the two principal components of C7 Fluoroketone were expected to produce derivatives of perfluorobutanoic acid in the environment, in particular hexafluoroacetone (HFA). The commenter provides two references documenting the extreme reactivity of HFA in water.

In response to the above comment, the compound's manufacturer submitted a late comment disagreeing with these statements and indicating that hydrate formation is significantly different for branched fluoroketones such as C7 Fluoroketone compared to simple unbranched fluoroketones such as HFA. The manufacturer stated that C7 Fluoroketone has low mammalian toxicity, low potential for aquatic toxicity and low environmental impact.

Response: After evaluating the comment, reviewing the risk screen prepared under SNAP, and reviewing supplemental information provided by the manufacturer, EPA disagrees with the concerns raised by the first commenter. In the SNAP submission for C7 Fluoroketone in the streaming end-use and in more recent information submitted by the manufacturer, data indicate that C7 Fluoroketone has very

low solubility or reactivity in water and that it is highly volatile. The lack of water solubility for C7 FK indicates that it will not form gem-diol hydrates and will thus not have appreciable effects in any organisms that might be exposed to it. In addition, the lack of solubility and high volatility will prevent any significant formation of perfluorobutanoic acid derivatives (e.g., HFA) in surface waters. While the two references provided by the commenter document the extreme reactivity of HFA in water (a fact that is supported by other sources of chemical information), these references provide no information to support the claim that C7 Fluoroketone should react similarly.

Further, two inhalation studies performed for C7 Fluoroketone (a 5-day repeat toxicity study in which study animals were exposed to high concentrations of the compound and a 28-day repeat dose study in which male and female rats were exposed to concentrations ≤10,000 ppm for 6 hours per day) showed no inhalation portal-of-entry effects.[7] No other observations were reported that might indicate any other adverse effects on blood oxygenation or similar impairments. The concern with potential toxicity of C7 Fluoroketone is not supported by information available about its chemistry and current toxicity testing data on the compound.

IV. Final Action

We are issuing a final listing for C7 Fluoroketone, finding it acceptable subject to narrowed use limits for use as a substitute for halon 1211 as a streaming agent in non-residential applications, as initially proposed. We have determined that the overall environmental and human health risk posed by C7 Fluoroketone is lower than or comparable to the risks posed by other available substitutes in the same end use.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and it is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

[7] Portal of entry effects are specifically investigated in acute and short-term inhalation exposure studies as the relevant tissues will receive the greatest exposure to the study compound.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final rule is an Agency determination. It contains no new requirements for reporting. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations in subpart G of 40 CFR part 82 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control numbers 2060–0226 (EPA ICR No. 1596.08). The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statutes unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entities are defined as (1) a small business that produces or uses fire suppressants such as total flooding and/or streaming agents as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities beyond current industry practices. Today's action effectively supports the introduction of a new alternative to the market for fire protection extinguishing systems, thus providing additional options for users making the transition away from ozone-depleting halons.

Use of halon 1301 total flooding systems and halon 1211 streaming agents have historically been in specialty fire protection applications including essential electronics, civil aviation, military mobile weapon systems, oil and gas and other process industries, and merchant shipping with smaller segments of use including libraries, museums, and laboratories. The majority of halon system and equipment owners continue to maintain and refurbish existing systems since halon supplies continue to be available in the U.S. Owners of new facilities make up the market for the new alternative agent systems and may also consider employing other available fire protection options including new, improved technology for early warning and smoke detection. Thus, EPA is providing more options to any entity, including small entities, by finding substitutes acceptable for use. The narrowed use limit imposed on the substitute in today's rule is consistent with the application suggested by the submitter and with current industry practices. Therefore, we conclude that the rule does not impose any new cost on businesses.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. By finding a new substitute acceptable, today's rule gives additional flexibility to small entities that are concerned with fire suppression. EPA also has worked closely together with the NFPA, which conducts regular outreach with small entities and involves small state, local, and tribal governments in developing and implementing relevant fire protection standards and codes.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. This action imposes no enforceable duty on any State, local, or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This final rule will provide an additional option for fire protection subject to safety guidelines in industry standards. These standards are typically already required by state or local fire codes, so this action will not affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial

direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This regulation applies directly to facilities that use the substance and not to governmental entities. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It does not significantly or uniquely affect the communities of Indian tribal governments because this regulation applies directly to facilities that use this substance and not to tribal or governmental entities. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in E.O. 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are discussed in section II.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA defers to existing NFPA voluntary consensus standards and Occupational Safety and Health Administration (OSHA) regulations that relate to the safe use of halon substitutes reviewed under SNAP. EPA has worked in consultation with OSHA to encourage development of technical standards to be adopted by voluntary consensus standards bodies. EPA refers users to the latest edition of NFPA 10 Standard for Portable Fire Extinguishers. A copy of this standard may be obtained by calling the NFPA's telephone number for ordering publications at 1–800–344–3555.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This final rule provides a fire suppression substitute with no ODP and low GWP. The avoided ODS and greenhouse gas emissions would assist in restoring the stratospheric ozone layer, avoiding adverse climate impacts, and result in human health and environmental benefits.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 29, 2013.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: April 18, 2013.

Bob Perciasepe,

Acting Administrator.

For the reasons set out in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for Part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart G—Significant New Alternatives Policy Program

■ 2. Subpart G of part 82 is amended by adding appendix T to read as follows:

Appendix T to Subpart G of Part 82—Substitutes listed in the April 29, 2013 Final Rule, effective May 29, 2013.

FIRE SUPPRESSION AND EXPLOSION PROTECTION SECTOR—ACCEPTABLE SUBJECT TO NARROWED USE LIMITS

End-use	Substitute	Decision	Conditions	Further Information
Streaming	C7 Fluoro-ketone as a substitute for Halon 1211.	Acceptable subject to narrowed use limits.	For use only in non-residential applications.	Use of this agent should be in accordance with the latest edition of NFPA Standard 10 for Portable Fire Extinguishers. For operations that fill canisters to be used in streaming applications, EPA recommends the following: —Adequate ventilation should be in place; —All spills should be cleaned up immediately in accordance with good industrial hygiene practices; and —Training for safe handling procedures should be provided to all employees that would be likely to handle containers of the agent or extinguishing units filled with the agent. See additional comments 1, 2, 3, 4.

Additional comments:
1—Should conform to relevant OSHA requirements, including 29 CFR 1910, Subpart L, Sections 1910.160 and 1910.162.
2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.
3—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.
4—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (e.g., respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

[FR Doc. 2013–10046 Filed 4–26–13; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121009528–2729–02]

RIN 0648–XC634

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; quota transfers.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2013 commercial summer flounder quota to the Commonwealth of Virginia and to the State of Rhode Island; and that the Commonwealth of Virginia is transferring a portion of its 2013 commercial summer flounder quota to the Commonwealth of Massachusetts and to the State of New Jersey. NMFS is adjusting the quotas and announcing the revised commercial quota for each state involved.

DATES: Effective April 24, 2013, through December 31, 2013.

FOR FURTHER INFORMATION CONTACT: Carly Bari, Fishery Management Specialist, 978–281–9224.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are in 50 CFR part 648, and require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 648.100.

The final rule implementing Amendment 5 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan, which was published on December 17, 1993 (58 FR 65936), provided a mechanism for summer flounder quota to be transferred from one state to another. Two or more states, under mutual agreement and with the concurrence of the Administrator, Northeast Region, NMFS (Regional Administrator), can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider the criteria in § 648.102(c)(2)(i) to evaluate requests for quota transfers or combinations.

North Carolina has agreed to transfer 556,921 lb (252,615 kg) of its 2013 commercial quota to Virginia. This transfer was prompted by summer flounder landings of a number of North Carolina vessels that were granted safe harbor in Virginia due to hazardous shoaling, from March 20, 2013, to April 5, 2013, thereby requiring a quota transfer to account for an increase in Virginia's landings that would have otherwise accrued against the North Carolina quota. North Carolina has also agreed to transfer 8,940 lb (4,055 kg) of its 2013 commercial quota to Rhode Island. This transfer was prompted by summer flounder landings of a North Carolina vessel that was granted safe harbor in Rhode Island on March 17, 2013, thereby requiring a quota transfer to account for an increase in Rhode Island's landings that would have otherwise accrued against the North Carolina quota.

Virginia has agreed to transfer 10,990 lb (4,985 kg) of its 2013 commercial quota to Massachusetts. This transfer was prompted by summer flounder landings of a Virginia vessel that was granted safe harbor in Massachusetts on March 20, 2013, thereby requiring a quota transfer to account for an increase in Massachusetts' landings that would have otherwise accrued against Virginia quota. Virginia has also agreed to transfer 11,729 lb (5,320 kg) of its 2013 commercial quota to New Jersey. This transfer was prompted by summer flounder landings of a Virginia vessel that was granted safe harbor in New Jersey on March 7, 2013, thereby requiring a quota transfer to account for an increase in New Jersey's landings that would have otherwise accrued against the Virginia quota. The Regional Administrator has determined that the criteria set forth in § 648.102(c)(2)(i) have been met. The revised summer flounder quotas for calendar year 2013 are: North Carolina, 422,360 lb (191,579 kg); Virginia, 5,040,501 lb (2,286,333 kg); New Jersey, 1,972,066 lb (894,514 kg); Rhode Island, 1,839,824 lb (834,530

kg); and Massachusetts, 791,236 lb (358,899 kg).

Classification

This action is taken under 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 23, 2013.

Kara Meckley,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–10022 Filed 4–24–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120918468–3111–02]

RIN 0648–XC612

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels (CVs) using hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2013 Pacific cod total allowable catch apportioned to CVs using hook-and-line gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), April 24, 2013, through 1200 hours, A.l.t., September 1, 2013.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2013 Pacific cod total allowable catch (TAC) apportioned to CVs using hook-and-line gear in the Western Regulatory Area of the GOA is 145 metric tons (mt), as established by the final 2013 and 2014 harvest specifications for groundfish of the GOA (78 FR 13162, February 26, 2013).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2013 Pacific cod TAC apportioned to CVs using hook-and-line gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 130 mt, and is setting aside the remaining 15 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by using hook-and-line gear in the Western Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by CVs using hook-and-line gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of April 22, 2013.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 23, 2013.

Kara Meckley,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–10021 Filed 4–24–13; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 82
Monday, April 29, 2013

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–0926; Airspace Docket No. 12–ANM–24]

Proposed Establishment of Class E Airspace; Port Townsend, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Jefferson County International Airport, Port Townsend, WA. Controlled airspace is necessary to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) standard instrument approach procedures at Jefferson County International Airport. The FAA is proposing this action to enhance the safety and management of aircraft operations at the airport.

DATES: Comments must be received on or before June 13, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0926; Airspace Docket No. 12–ANM–24, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0926 and Airspace Docket No. 12–ANM–24) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0926 and Airspace Docket No. 12–ANM–24''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700/1,200 feet above the surface at Jefferson County International Airport, Port Townsend, WA. Controlled airspace within a 9.3-mile radius of the airport with a segment extending from the radius of the airport to 10.1 miles west of the airport is necessary to accommodate aircraft executing new RNAV (GPS) standard instrument approach procedures at Jefferson County International Airport. This action would enhance the safety and management of aircraft operations at the airport.

Class E airspace designations are published in paragraph 6005, of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation; (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish controlled airspace at Jefferson County International Airport, Port Townsend, WA.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Port Townsend, WA [New]

Jefferson County International Airport, WA

(Lat. 48°03′14″ N., long. 122°48′38″ W.)

That airspace extending upward from 700 feet above the surface within a 9.3-mile radius of the Jefferson County International Airport and within 2.5 miles each side of the 284° bearing of the Jefferson County International Airport extending from the 9.3-mile radius to 10.1 miles west of the airport; that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 48°24′00″ N., long. 123°18′00″ W.; to lat. 48°23′00″ N., long. 122°35′00″ W.; to lat. 47°52′00″ N., long. 122°33′00″ W.; to lat. 47°53′00″ N., long. 123°00′00″ W.; to lat. 48°05′00″ N., long. 123°17′00″ W.; lat. 48°10′00″ N., long. 123°23′00″ W., thence to the point of beginning.

Issued in Seattle, Washington, on April 17, 2013.

Clark Desing,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2013–09967 Filed 4–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2013–0339; Airspace Docket No. 12–AEA–15]

RIN 2120–AA66

Proposed Establishment of Area Navigation (RNAV) Routes; Washington, DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish two new low-altitude RNAV routes, designated T–287 and T–299, in the Washington, DC area. The new routes would enhance the flow of air traffic to the west of the Washington-Dulles International Airport.

DATES: Comments must be received on or before June 13, 2013.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; telephone: (202) 366–9826. You must identify FAA Docket No. FAA–2013–0339 and Airspace Docket No. 12–AEA–15 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2013–0339 and Airspace Docket No. 12–AEA–15) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2013–0339 and Airspace Docket No. 12–AEA–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Persons interested in being placed on a mailing list for future NPRM's should

contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish two new RNAV routes (T–287 and T–299) west of the Washington-Dulles International Airport (IAD) area. The new routes support the Washington, DC Optimization of Airspace and Procedures in a Metroplex (OAPM) project and would enable aircraft to circumnavigate IAD arrival flows. Aircraft transiting through the Washington, DC area are routinely vectored to the west of the IAD area in order to separate them from the major arrival flows into the IAD area. T–287 and T–299 are designed to mimic the flight paths currently used for vectoring these transiting aircraft. The routes would provide consistent and predictable routing for aircraft to file and navigate while being assured of separation from larger turbojet aircraft entering and exiting the Washington, DC area. Further, the routes would reduce air traffic controller workload and enhance efficiency within the National Airspace System.

RNAV routes are published in paragraph 6011 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as required to preserve the safe and efficient flow of air traffic.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9W, Airspace Designations and Reporting Points, Dated August 8, 2012, and effective September 15, 2012, is amended as follows:

Paragraph 6011—United States Area Navigation Routes

T–287 DENNN, VA (GVE) to TOMYD, MD [New]

DENNN, VA	WP	(Lat. 38°05′ 06″ N., long. 078°12′ 28″ W.);
CAARY, VA	WP	(Lat. 38°19′ 40″ N., long. 078°23′ 37″ W.);
WILMY, VA	WP	(Lat. 38°30′ 43″ N., long. 078°32′ 10″ W.);
KAIJE, VA	WP	(Lat. 38°44′ 35″ N., long. 078°42′ 48″ W.);
BAMMY, WV	WP	(Lat. 39°24′ 33″ N., long. 078°25′ 46″ W.);
REEES, PA	WP	(Lat. 39°47′ 52″ N., long. 077°45′ 56″ W.);
TOMYD, MD	WP	(Lat. 39°40′ 52″ N., long. 077°08′ 26″ W.)

T–299 HAANK, VA to SCAPE, PA [New]

HAANK, VA	WP	(Lat. 38°01′ 33″ N., long. 079°02′ 56″ W.);
KAIJE, VA	WP	(Lat. 38°44′ 35″ N., long. 078°42′ 48″ W.);
BAMMY, WV	WP	(Lat. 39°24′ 33″ N., long. 078°25′ 46″ W.);
REEES, PA	WP	(Lat. 39°47′ 52″ N., long. 077°45′ 56″ W.);
SCAPE, PA	WP	(Lat. 39°56′ 42″ N., long. 077°32′ 12″ W.);

Issued in Washington, DC, on April 22, 2013.

Gary A. Norek,

Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–10039 Filed 4–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0007; DS63610300 DR2PS0000.CH7000 134D0102R2]

30 CFR Part 1206

Indian Oil Valuation Negotiated Rulemaking Committee; Meeting

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Meeting.

SUMMARY: The Office of Natural Resources Revenue (ONRR) announces additional meetings for the Indian Oil Valuation Negotiated Rulemaking Committee (Committee). The Committee membership includes representatives from Indian tribes, individual Indian mineral owner organizations, minerals industry representatives, and other Federal bureaus.

DATES: Tuesday and Wednesday, June 4 and 5, 2013; Tuesday and Wednesday, August 6 and 7, 2013; and Monday and Tuesday, September 16 and 17, 2013. All meetings will run from 8:30 a.m. to 5 p.m. Mountain Time for all dates. The public will have the opportunity to comment between 2 p.m. and 3 p.m. Mountain Time on June 5, August 7, and September 17, 2013.

ADDRESSES: ONRR will hold the tenth, eleventh, and twelfth meetings at the Denver Federal Center, 6th Ave and Kipling, Bldg. 85 Auditorium, Lakewood, CO 80225.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Wunderlich, ONRR, at (303) 231–3663; or (303) 231–3744 via fax; or via email *karl.wunderlich@onrr.gov.*

SUPPLEMENTARY INFORMATION: ONRR formed the Committee on December 8, 2011, to develop specific recommendations regarding proposed revisions to the existing regulations for oil production from Indian leases, especially the major portion requirement. The Committee includes representatives of parties that the final rule will affect. It will act solely in an advisory capacity to ONRR and will neither exercise program management responsibility nor make decisions directly affecting the matters on which it provides advice.

Meetings are open to the public without advanced registration on a space-available basis. Minutes of this meeting will be available for public inspection and copying at our offices in Building 85 on the Denver Federal Center in Lakewood, Colorado, or are available at *www.onrr.gov/Laws_R_D/IONR.* ONRR conducts these meetings under the authority of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2, Section 1 *et seq.*).

Dated: April 15, 2013.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2013–09713 Filed 4–26–13; 8:45 am]

BILLING CODE 4310–T2–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0212]

RIN 1625–AA00

Safety Zone; Fairfield Estates Fireworks Display, Atlantic Ocean, Sagaponack, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters of the Atlantic Ocean, in Sagaponack, NY for the Fairfield Estates fireworks display. This action is necessary to provide for the safety of life on navigable waters during the event. Entering into, transiting through, remaining, anchoring or mooring within this regulated area would be prohibited unless authorized by the Captain of the Port (COTP) Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before May 29, 2013.

Requests for public meetings must be received by the Coast Guard on or before May 6, 2013.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rulemaking, call or email Petty Officer Scott Baumgartner, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4428, *Scott.A.Baumgartner@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov*, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov*, type the docket number [USCG–2013–0212] in

the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number (USCG–2013–0212) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES** on or before May 6, 2013. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This is a first time event with no regulatory history.

C. Basis and Purpose

The legal basis for this temporary rule is 33 U.S.C. 1231; 46 U.S.C. chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6 and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1 which collectively authorize the Coast Guard to define regulatory safety zones.

This temporary regulation is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks display.

D. Discussion of Proposed Rule

This temporary rule proposes to establish a safety zone for the Fairfield Estates fireworks display. This proposed regulated area includes all waters of the Atlantic Ocean within a 1000 foot radius of the fireworks barge located 1000 feet south of the Fairfield Estate in Sagaponack, NY.

This rule will be effective from 8:30 p.m. on August 1, 2013 through 10:30 p.m. on August 2, 2013.

The fireworks display is scheduled to occur from 8:30 p.m. until 10:30 p.m. on August 1, 2013. If the event is cancelled due to inclement weather, then this regulation will be enforced from 8:30 p.m. until 10:30 p.m. on August 2, 2012.

Because spectator vessels are expected to congregate around the location of the fireworks display, this regulated area is necessary to protect both spectators and participants from the hazards created by unexpected pyrotechnics detonation, and burning debris. This proposed rule would temporarily establish a regulated area to restrict vessel movement around the location of the fireworks display to reduce the safety risks associated with it.

To aid the public in identifying the launch platform; fireworks barges used for this display will have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY.'' This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Public notifications may be made to the local maritime community prior to the event through the Local Notice to Mariners, and Broadcast Notice to Mariners.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard determined that this rulemaking would not be a significant regulatory action for the following reasons: The regulated area will be of limited duration, the area covers only a small portion of the navigable waterways and waterway users may transit around the area. Also, mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone.

Advanced public notifications will also be made to the local maritime community through the Local Notice to Mariners as well as Broadcast Notice to Mariners.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Those potentially impacted include owners or operators of vessels intending to enter, transit, anchor or moor within the regulated area during the effective period. The temporary safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The regulated area will be of limited size and of short duration and mariners may request permission from the COTP Sector Long Island Sound or the designated representative to transit the zone. Notifications will be made to the maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the

rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a safety zone. This rule may be categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREA AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0212 to read as follows:

§ 165.T01-0212 Safety Zone; Fairfield Estates Fireworks Display, Atlantic Ocean, Sagaponack, NY.

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean within a 1000-foot radius of the fireworks barge located off the Fairfield Estate in Sagaponack, NY approximate position 40°54′26.97″ N, 072°15′9.39″ W North American Datum 1983.

(b) *Enforcement Period.* This rule will be enforced from 8:30 p.m. until 10:30 p.m. on August 1, 2013. If the event is postponed due to inclement weather, then this rule will be enforced from 8:30 p.m. until 10:30 p.m. on August 2, 2013.

(c) *Regulations.* The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, remaining, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port (COTP) or the designated representatives.

(1) *Definitions.* The following definitions apply to this section:

(i) *Designated Representative.* A ''designated representative'' is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP, Sector Long Island Sound, to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(ii) *Official Patrol Vessels.* Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP Sector Long Island Sound.

(iii) *Spectators.* All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(2) Spectators desiring to enter or operate within the regulated area should contact the COTP Sector Long Island Sound at 203–468–4401 (Sector LIS command center) or the designated representative via VHF channel 16 to obtain permission to do so. Spectators given permission to enter or operate in the regulated area must comply with all directions given to them by the COTP Sector Long Island Sound or the designated on-scene representative.

(3) Upon being hailed by an official patrol vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

1. Fireworks barges used in this location will have a sign on their port and starboard side labeled ''FIREWORKS—STAY AWAY''. This sign will consist of 10 inch high by 1.5 inch wide red lettering on a white background.

Dated: April 8, 2013.

J.M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Sector Long Island Sound.

[FR Doc. 2013–09852 Filed 4–26–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0853; FRL–9806–4]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District, Santa Barbara County Air Pollution Control District, South Coast Air Quality Management District and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD), Santa Barbara County Air Pollution Control District (SBCAPCD), South Coast Air Quality Management District (SCAQMD) and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern Volatile Organic Compounds (VOC) emissions from motor vehicle and mobile equipment coating operations and from graphic arts operations. We are approving local rules that regulate these emission sources under the Clean Air Act (''CAA'' or ''the Act''). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by May 29, 2013.

ADDRESSES: Submit comments, identified by docket number R09–OAR–2012–0853, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules?
II. EPA's Evaluation and Action
A. How is EPA evaluating these rules?
B. Do the rules meet the evaluation criteria?
C. EPA Recommendations to Further Improve the Rules.
D. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were amended or revised by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended/revised	Submitted
AVAQMD	1151	Motor Vehicle and Mobile Equipment Coating Operations.	Amended 6/19/12	9/21/12

TABLE 1—SUBMITTED RULES—Continued

Local agency	Rule No.	Rule title	Amended/revised	Submitted
SBCAPCD	339	Motor Vehicle and Mobile Equipment Coating Operations.	Revised 6/19/08	10/20/08
SCAQMD	1151	Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations.	Amended 12/2/05	4/6/09
VCAPCD	74.18	Motor Vehicle and Mobile Equipment Coating Operations.	Revised 11/11/08	3/17/09
VCAPCD	74.19	Graphic Arts	Revised 6/14/11	9/27/11

On October 11, 2012 for AVAQMD Rule 1151, November 18, 2008 for SBCAPCD Rule 339, May 13, 2009 for SCAQMD Rule 1151, April 20, 2009 for VCAPCD Rule 74.18 and October 24, 2011 for VCAPCD Rule 74.19, EPA determined that the submittals met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of the following rules into the SIP: AVAQMD Rule 1151 on April 10, 2000 (65 FR 18901), SBCAPCD Rule 339 on November 13, 1998 (63 FR 63410), SCAQMD Rule 1151 on May 26, 2000 (65 FR 34101), VCAPCD Rule 74.18 on April 19, 2001 (66 FR 20086) and VCAPCD Rule 74.19 on October 25, 1005 (70 FR 61561).

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions. AVAQMD rule 1151, SBCAPCD rule 339, SCAQMD rule 1151 and VCAPCD rule 74.18 are rules that regulate VOC emissions from automotive and mobile equipment coating operations. VCAPCD rule 74.19 regulates VOC emissions from graphic arts operations. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). AVAQMD, SCQAMD and VCAPCD regulate ozone nonattainment areas (see 40 CFR part 81), so Rules AVAQMD 1151, SCQAMD 1151, VCAPCD 74.18 and VCAPCD 74.19 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability and RACM/RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
3. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
3. ''Control Technique Guidelines for Emissions from Automobile Refinishing'' (EPA–450/3–88–009), October 1988.
4. CARB Suggested Control Measure (SCM) for ''Automotive Coatings'' as approved by the Board on October 20, 2005.
5. ''Control Techniques Guidelines for Offset Lithographic Printing and Letterpress Printing,'' EPA 453/R–06–002, September 2006.
6. ''Control Techniques Guidelines for Industrial Cleaning Solvents,'' EPA 453/R–06–001, September 2006.

B. Does the rule meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACM/RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules. However, these recommendations are not currently the basis for rule disapproval.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or

safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

• does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 12, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–10048 Filed 4–26–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 420, 424, and 498

[CMS–6045–P]

RIN 0938–AP01

Medicare Program; Requirements for the Medicare Incentive Reward Program and Provider Enrollment

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the Incentive Reward Program provisions in § 420.405 and certain provider enrollment requirements in part 424, subpart P. The most significant of these revisions include: changing the Incentive Reward Program potential reward amount for information on individuals and entities who are or have engaged in acts or omissions which resulted in the imposition of a sanction from 10 percent of the overpayments recovered in the case or $1,000, whichever is less, to 15 percent of the final amount collected applied to the first $66,000,000 for the sanctionable conduct; expanding the instances in which a felony conviction can serve as a basis for denial or revocation of a provider or supplier's enrollment; if certain criteria are met, enabling us to deny enrollment if the enrolling provider, supplier, or owner thereof had an ownership relationship with a previously enrolled provider or supplier that had a Medicare debt; enabling us to revoke Medicare billing privileges if we determine that the provider or supplier has a pattern or practice of submitting claims for services that fail to meet Medicare requirements; and limiting the ability of ambulance suppliers to ''backbill'' for services performed prior to enrollment. We believe this proposed rule would—increase the incentive for individuals to report information on individuals and entities that have or are engaged in sanctionable conduct; improve our ability to detect new fraud schemes; and help us ensure that fraudulent entities and individuals do not enroll in or maintain their enrollment in the Medicare program.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 28, 2013.

ADDRESSES: In commenting, please refer to file code CMS–6045–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By Regular Mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6045–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By Express or Overnight Mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–6045–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By Hand or Courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Morgan Burns, (202) 690–5145, for issues related to the Incentive Reward Program. Frank Whelan, (410) 786–1302, for issues related to provider enrollment.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning

approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Executive Summary and Background

A. Executive Summary

1. Purpose

a. Need for Regulatory Action

This proposed rule is necessary to make revisions to the Incentive Reward Program in 42 CFR 420.405, and to make certain changes to the provider enrollment provisions in 42 CFR part 424, subpart P. This proposed rule would: (1) increase the incentive for individuals to report information on individuals and entities that have or are engaged in sanctionable conduct; and (2) help ensure that fraudulent entities and individuals do not enroll in or maintain their enrollment in the Medicare program.

b. Legal Authority

As discussed in more detail in section I.B. of this proposed rule, there are several legal authorities for our proposed provisions as follows:

- Incentive Reward Program. Section 203(b)(1) of the Health Insurance Portability and Accountability Act of 1996, codified at 42 U.S.C. 1395b-5, instructed the Secretary to establish a program to encourage individuals to report information regarding persons and entities that have or are engaged in acts or omissions that constitute grounds for the imposition of a sanction under sections 1128, 1128A or 1128B of the Act or who have otherwise engaged in sanctionable fraud and abuse against the Medicare program under Title XVIII of the Social Security Act (the Act).
- Provider enrollment provisions. Sections 1102 and 1871 of the Act provide general authority for the Secretary to prescribe regulations for the efficient administration of the Medicare program. Also, section 1866(j) of the Act, codified at 42 U.S.C. 1395cc(j), provides specific authority with regard to the enrollment process for providers and suppliers.

2. Brief Summary of the Major Provisions

a. Incentive Reward Program

We propose to increase the potential reward structure from 10 percent of the overpayments recovered in the case or $1,000, whichever is less, to 15 percent of the final amount collected applied to the first $66,000,000 for the sanctionable conduct. We are also proposing other changes that would clarify which individuals are eligible for a reward.

b. Provider Enrollment Provisions

We are proposing the following provisions regarding provider enrollment:

- Allow denial of enrollment if the provider, supplier or current owner thereof was the owner of another provider or supplier that had a Medicare debt when the latter's enrollment was voluntarily or involuntarily terminated or revoked and—

++ The owner left the provider or supplier that had the Medicare debt within 1 year of that provider or supplier's voluntary termination, involuntary termination, or revocation;

++ The Medicare debt has not been fully repaid; and

++ We determine that the uncollected debt poses an undue risk of fraud, waste, or abuse.

- Allow denial of enrollment or revocation of Medicare billing privileges if the provider, supplier, owner or managing employee thereof was convicted of a felony within the past 10 years. (Currently, enrollment cannot be denied or revoked based on a managing employee's felony conviction.)
- Allow revocation of Medicare billing privileges if the provider or supplier has a pattern or practice of billing for services that do not meet Medicare requirements.
- With the exception noted in section II.B.5. of this proposed rule, require all revoked providers and suppliers (regardless of type) to submit their remaining claims within 60 days after their revocation.
- Limit the ability of ambulance companies to ''back bill'' for services furnished prior to enrollment. Under § 424.520(d), physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations currently cannot bill for services furnished prior to the later of the date the supplier filed an enrollment application that was subsequently approved or the date the supplier began furnishing services at a practice location. (Independent diagnostic testing facilities (IDTFs) and suppliers of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) have similar restrictions.) We propose to expand this to include ambulance suppliers.
- Eliminate the ability of revoked providers and suppliers to submit a corrective action plan (CAP) unless the revocation is based on § 424.535(a)(1).

3. Summary of Costs and Benefits

The following table provides a summary of the costs and benefits associated with the principal provisions in this proposed rule.

TABLE 1—SUMMARY OF COSTS AND IMPACTS

Provision description	Impacts
Incentive Reward Program	Based upon the experience under the IRS reward program, the increase in the portion of the amount collected eligible for a reward will likely result in an increase of reporting of sanctionable conduct, which would increase the collection of improper payments by the federal government. There may also be a sentinel effect whereby fraud and errors are reduced by Medicare beneficiaries' scrutiny of their bills. For these reasons, and as further explained in the Regulatory Impact Analysis of this proposed rule, we tentatively project a net increase in recoveries of $24.5 million per year as a result of our proposed changes to the Incentive Reward Program. Estimated costs of preparing attestations $0.07 million.
Denial of Enrollment Based on Prior Medicare Debt.	Though a savings to the federal government would accrue from such a denial, the monetary amount cannot be quantified.
Expansion of Ability to Deny or Revoke Medicare Billing Privileges Based on Felony Conviction.	Though a savings to the federal government would accrue from such a denial or revocation, the monetary amount cannot be quantified.
Revocation Based on Pattern or Practice of Billing for Services that Do Not Meet Medicare Requirements.	Though a savings to the federal government would accrue from such a revocation, the monetary amount cannot be quantified.

TABLE 1—SUMMARY OF COSTS AND IMPACTS—Continued

Provision description	Impacts
Requirement for Revoked Providers and Suppliers to Submit Remaining Claims within 60 Days after Revocation.	Monetary amount cannot be quantified. We believe, however, that this requirement would (1) limit the Medicare program's vulnerability to fraudulent claims; and (2) allow more focused medical review. This would likely result in some savings to the federal government.
Inclusion of Ambulance Suppliers within § 424.520(d).	Would result in a transfer of $327.4 million per year (primary estimate) from ambulance suppliers to the federal government.
Elimination of Ability to Submit CAP if Revoked on Grounds Other Than § 424.535(a)(1).	Monetary amount cannot be quantified. However, the provision would prevent these providers and suppliers from being able to immediately begin billing Medicare again once they submit the correct information.

B. Background and General Overview

1. Incentive Reward Program

Section 203(b)(1) of HIPAA required the Secretary to establish a program to encourage individuals to report information on individuals and entities who are engaging in or who have engaged in acts or omissions that constitute grounds for the imposition of a sanction under sections 1128, 1128A or 1128B of the Act or who have otherwise engaged in fraud and abuse against the Medicare program under Title XVIII of the Act for which there is a sanction provided under law, otherwise referred to ''sanctionable conduct'' throughout the rule. Section 203(b)(2) of HIPAA authorized the Secretary to pay a portion of the amounts collected to individuals who report information to the Secretary under the program established by section 203(b)(1) of HIPAA which serves as the basis for collection by the Secretary or the Attorney General of the United States of at least $100 (excluding penalties under section 1128B of the Act). Section 203(b)(2) of HIPAA also requires that any reward be paid from the amounts collected, under procedures similar to those applicable under section 7623 of the Internal Revenue Code of 1986 for payments to individuals providing information on violations of such Code. The purpose of these provisions is to help protect the Medicare Trust Funds by providing incentives to Medicare beneficiaries and other parties to report suspected conduct. The intent of these provisions is not to provide rewards for ''simple mistakes'' or unintentional billing errors.

In the June 8, 1998 **Federal Register** (63 FR 31123), we published a final rule with comment period titled, ''Medicare Program; Incentive Programs-Fraud and Abuse.'' This final rule with comment period implemented section 203(b) of HIPAA by establishing a reward program to encourage individuals to report potential fraud and abuse to Medicare and by adding a new section, 42 CFR 420.405, to the regulations. Section 420.405(a) specifies a collection threshold of at least $100 (consistent with section 203(b)(2) of HIPAA). Section 420.405(b) specifies that in order for an individual to be eligible to receive a reward, the information must relate to the activities of a specific individual or entity and must specify the time period of the alleged activities. Examples of specific activities include, but are not limited to, billing for services never rendered, and billing for supplies not ordered. Other activities may include offers of money, goods or free services in exchange for the beneficiary's Medicare identification number. The rule also states that CMS does not give a reward for information relating to an individual or entity that, at the time the information is provided, is already the subject of a review or investigation by CMS or law enforcement. Section 420.405(e) states the amount of a reward represents what CMS considers to be adequate compensation in the particular case, not to exceed 10 percent of the overpayments recovered in the case or $1,000, whichever is less.

2. Provider Enrollment

In the April 21, 2006 **Federal Register** (71 FR 20754), we published a final rule titled, ''Medicare Program; Requirements for Providers and Suppliers to Establish and Maintain Medicare Enrollment.'' As its title indicates, the final rule set forth requirements in part 424, subpart P that providers and suppliers must meet in order to obtain and maintain Medicare billing privileges. Since its publication in April 2006, we have updated subpart P to address a number of enrollment issues. Such topics have included the establishment of performance standards for IDTFs, issues related to the National Provider Identifier (NPI), ordering and certifying requirements, enrollment application fees, site visits, and screening requirements.

In the April 2006 final rule, we cited sections 1102 and 1871 of the Act as general authority for our establishment of these requirements, which were designed for the efficient administration of the Medicare program. Pursuant to this general rulemaking authority and pursuant to section 1866(j) of the Act, we again propose several changes to our provider enrollment regulations to ensure that Medicare payments are only made to qualified providers and suppliers. Section 1866(j) of the Act states that, the Secretary shall establish by regulation a process for the enrollment of providers of services and suppliers that includes certain specified statutory elements, including a process for screening providers and suppliers.

II. Provisions of the Proposed Regulations

A. Incentive Reward Program (IRP)

As demonstrated by the sustained record-breaking returns to the federal government that result from private persons filing suit on behalf of the government, fraud reporting by individuals is a proven tool for the government to detect fraud, waste and abuse in the Medicare program. In 2012, the Health Care Fraud and Abuse Control Program had record collections for health care fraud, where collections topped $4 billion.[1] Public involvement in our anti-fraud efforts is critical because alert and vigilant providers, beneficiaries, family members, and caregivers are able to detect and prevent fraud as it occurs. Information from beneficiaries and other parties helps us to quickly identify fraudulent practices, stop payment to suspect providers and suppliers for inappropriate services or items, and prevent further abuses in the program. However, many people do not report suspected fraud because they are not monitoring claims submitted to Medicare for their care, or noticed a suspicious claim but were not motivated to report. Every fraudulent claim submitted contains a beneficiary's Medicare number. Therefore, we believe

[1] *http://oig.hhs.gov/publications/docs/hcfac/hcfacreport2012.pdf.*

that each complaint we receive may represent hundreds of other individuals that did not spot a fraudulent activity or did not report their suspicions to us.

To promote the importance of reporting fraud, we conduct national campaigns to train Medicare beneficiaries and caregivers to detect and prevent health care fraud. On March 7, 2012, we released new explanations of benefits (Medicare Summary Notices (MSNs)) that are easier to read and provide instructions on how to spot fraud available online, and starting in 2013, the new MSNs will be mailed out quarterly to beneficiaries. We believe these changes will encourage beneficiaries to routinely review their MSNs. The State Health Insurance Assistance Programs and Senior Medicare Patrol counselors also educate beneficiaries about the importance of viewing and monitoring their health care claims and of identifying and reporting any suspicious activity 1–800-Medicare or 1–800–HHS–TIPS.

We have evaluated the existing Incentive Reward Program (IRP) and believe that the proposed changes for enhanced incentives would motivate more individuals to review their MSNs and to report suspicious activity. Section 203(b)(2) of HIPAA permitted CMS to pay a portion of amounts collected under procedures similar to section 7623 of the Internal Revenue Code, which authorized reward payments to individuals providing information on violations of the IRS code by individual taxpayers. The Congress enacted the Medicare Incentive Reward Program in HIPAA on August 21, 1996, shortly after the Taxpayer Bill of Rights 2 (Pub. L. 104–168) was enacted on July 30, 1996 that amended the IRS program.

In 2006, the Tax Relief and Health Care Act of 2006 (Pub. L. 109–432) [2] was enacted, further amending section 7623 of the Internal Revenue Code to provide rewards of 15 to 30 percent of collected amounts to individuals for information on claims exceeding $2 million (and in the case of an individual taxpayer, the taxpayer had gross income exceeding $200,000), while maintaining the reward structure of 15 percent of collected amounts not to exceed $10 million applied to claims in dispute of less than $2 million (in case of an individual taxpayer, the individual's gross income was below $200,000). In June 2010, the IRS aligned the reward amounts for claims under and above the $2 million threshold, if the claim was filed after July 1, 2010.[3] Individuals may now receive rewards of 15 to 30 percent of collected amounts on claims of any value. However, rewards for claims filed before July 1, 2010 will be paid under the reward structure of 15 percent not to exceed $10 million.

The reward structure of IRS program for claims received after July 2010 is similar to the *qui tam* provisions of the False Claims Act (FCA) under 31 U.S.C. 3729 through 3733. Private individuals called ''relators'' may file a *qui tam* action on behalf of the federal government and are eligible for a share of the amounts collected as a result of the action. Many states have enacted laws similar to the FCA that permit individuals to file suit on behalf of the state. The FCA generally imposes civil liability on any person who submits, or causes the submission of, a false or fraudulent claim to the government (including federal health care programs like Medicare and Medicaid) for payment. The Department of Justice is the only government agency that can release a person's liability under the FCA. Relators generally obtain legal counsel prior to the filing of a FCA complaint and may be significantly involved in the development of a FCA case. The potential relator's share in a *qui tam* action can range between 15 and 30 percent of the total amount collected, depending on whether the government ''intervenes'' or joins the *qui tam* action.

We are proposing to revise § 420.405(e)(2) to increase the reward for information on individuals and entities that leads to the imposition of a sanction to 15 percent of the final amount collected applied to the first $66,000,000 for the sanctionable conduct; the reward would not increase if the amount collected was greater than $66,000,000.[4] This approach is similar to the IRS reward structure for claims received before July 1, 2010. We are proposing this structure because the IRS program has proved to be highly successful in generating leads that returned far greater sums than the existing Medicare IRP, which limited rewards to 10 percent of the first $10,000 of the final amount collected. Since the current IRP was put into operation in July, 1998, only 18 rewards have been paid, for a total of less than $16,000 and amounts collected of less than $3.5 million. In contrast, between 2007 and 2012, the IRS collected almost $1.6 billion, and paid approximately $193 million in rewards.[5] Based on the reported experience of the IRS, we believe our proposed improvements will provide greater incentives to beneficiaries, providers, and other parties to report sanctionable conduct. Providing potential rewards for 15 percent of the final amounts collected applied the first $66,000,000 for the sanctionable conduct sends a clear message to individuals trying to defraud Medicare—we are using all available tools to root out systematic and widespread fraud from the program.

We believe that proposing a reward structure for the IRP that is similar to the IRS program for claims under the $2 million threshold and received before July 2010 will provide additional incentives to individuals who otherwise would not have brought the information to the government's attention by filing a *qui tam* lawsuit. We believe proposing a reward program with a range of 15 to 30 percent could result in confusion about the IRP and the *qui tam* provisions of the FCA. The IRS program does not interact with the *qui tam* provisions because recoveries under Title 26 (the Internal Revenue Code) are excluded from the FCA (31 U.S.C. 3729(d)). We note that the Congress enacted the law that created the Medicare incentive reward program after the FCA had been in place for many years and had been significantly amended in 1986, thus we infer the Congress anticipated that the IRP would exist in parallel with the FCA, but not as a supplement to it. We believe the reward structure proposed here will fulfill the mandate of the Medicare statute and also create clear distinguishing features from the FCA.

We are also proposing this reward structure because it has an administrative structure similar to the existing IRP program. On that basis, we believe it will be administratively more

[2] The Internal Revenue Service Fiscal Year 2011 Report to Congress on the Use of Section 7623, available at *http://www.irs.gov/pub/irs-utl/fy2011_annual_report.pdf.*

[3] The Internal Revenue Service Fiscal Year 2011 Report to Congress on the Use of Section 7623, available at *http://www.irs.gov/pub/irs-utl/fy2011_annual_report.pdf.*

[4] Section 7623(a) of the Internal Revenue Code is implemented at 26 CFR 301.7623–1(c). Section 301.7623–1(c) states that the amount of a reward will represent what the district or service center director deems to be adequate compensation in the particular case, generally not to exceed 15 percent of the amounts (other than interest) collected by reason of the information. Payment of a reward will be made as promptly as the circumstances of the case permit, but not until the taxes, penalties, or fines involved have been collected. However, if the informant waives any claim for reward with respect to an uncollected portion of the taxes, penalties, or fines involved, the claim may be immediately processed. The reward for information that led to the collection of the first $66,000,000 will not be more than $10 million, similar to the IRS program.

[5] The Internal Revenue Service Fiscal Year 2012 Report to Congress on the Use of Section 7623, available at *http://www.irs.gov/pub/whistleblower/2012%20IRS%20Annual%20Whistleblower%20Report%20to%20Congress_mvw.pdf.*

efficient to implement. In particular, keeping the reward at a fixed percent of the amounts collected up to a set dollar amount avoids the need to establish a new administrative process to adjudicate the size of a reward that could range from 15 percent to 30 percent. This reward structure would be the simplest both to administer and, for individuals who may eligible for the IRP, to understand. Additionally, we believe the potential for a larger reward would motivate individuals to report who may otherwise have been discouraged by the length of collection, since we have estimated that the average timeframe for collection is 3 to 5 years before overpayment appeals are exhausted, Medicare funds are collected, and applicable fines and penalties are collected.

Although we believe the reward structure of 15 percent of final amounts collected applied to the first $66,000,000 for the sanctionable act is the preferred approach, we are soliciting comments on whether we should adopt the reward structure of 15 to 30 percent of amounts collected that the IRS offers for claims received after July 1, 2010 or a different reward structure, and whether the 15 percent reward should apply to final amounts collected other than $66,000,000. We anticipate that in increasing the size of the amounts collected that we would apply a reward for from $10,000 to $66,000,000, which would ensure that the vast majority of individuals would receive a portion of the collected amount that corresponds with the value of their information. Reports that have resulted in a reward under the IRP have led to an average collection of $193,069 by CMS, with the highest single collection of $998,770. In contrast, the IRS reported collecting $61,556,175 in 2003, the earliest data reported by the IRS.[6] In 2012, the IRS reported collecting a $592,498,294.[7] While there are limitations on estimating an increase in recoveries from the IRS' experience, given the significant upward trend in collections reported by the IRS following the changes to the reward amount in 2004, and again in 2006, we believe that the potential for a larger reward may encourage more individuals to report the specific information needed to begin the review or investigation of a provider or supplier for sanctionable conduct that may lead to the recoupment of an overpayment, which could result in higher amounts collected than we have experienced in the past.

We anticipate that some commenters may question the interaction of the IRP and the *qui tam* provisions of FCA described previously. We are proposing to clarify that an individual is not eligible for an IRP reward if he or she has filed a *qui tam* lawsuit under the federal or any state False Claims Act. We are also proposing that we do not give a reward for the same or substantially similar information that is the basis of a payment of a share of the amounts collected under the False Claims Act or any state False Claims Act, or if the same or substantially similar information is the subject of a pending False Claim Act case. We believe these restrictions on information eligible for a reward prevent us from paying rewards from amounts collected for the same sanctionable conduct.

Section 420.405(a) specifies that we will pay a monetary reward for information that leads to the collection of at least $100 of Medicare funds from individuals and entities that are engaging in, or have engaged in, acts or omissions that constitute grounds for the imposition of a sanction under section 1128, 1128A or section 1128B of the Act or that have otherwise engaged in sanctionable fraud and abuse against the Medicare program. Section 420.405(b) specifies that in order for an individual to be eligible to receive a reward, the information must relate to the activities of a specific individual or entity and must specify the time period of the alleged activities and states that CMS does not give a reward for information relating to an individual or entity that, at the time the information is provided, is already the subject of a review or investigation by CMS or law enforcement. The determination of whether an individual provided information eligible for a reward and whether the specific individual or entity was already the subject of a review or investigation by CMS or law enforcement are at the exclusive discretion of CMS. We pay rewards only if a reward is not otherwise provided for by law. When we apply the criteria specified in paragraphs (b), (c), and (e) of this section to determine the eligibility and the amount of the reward, the recipient is notified as specified in paragraph (d) of this section.

In § 420.405(a), we propose two revisions. First, we are proposing to redesignate the existing text in paragraph (a) to paragraph (a)(2) to emphasize that the determinations as to whether the reward criteria are met and the amount of the reward are at the exclusive discretion of CMS. Second, we are proposing to move the remaining text stating that when CMS applies the criteria specified in paragraphs (b), (c), and (e), and determines the eligibility and amount of the reward, it notifies the recipient as specified at new (a)(3).

In new paragraph (b)(3), we propose to specify that we do not give a reward for the same or substantially similar information that was the basis for a payment of a share of the amounts collected under the False Claims Act or any state False Claims Act, or if the same or substantially similar information is the subject of a pending False Claim Act case. This proposed change would prevent us from paying rewards from amounts collected for the same sanctionable conduct, or from amounts that may collected as a result of a pending False Claims Act case.

In new paragraph (c)(2)(v), we propose to clarify that an individual is not eligible for a reward under the IRP if he or she is eligible for a reward for furnishing the same or substantially similar information to the federal government under any other federal reward program or payment under federal law.

At § 420.405(e)(2), we propose to change the reward structure from an amount not to exceed 10 percent of the overpayments recovered in the case or $1,000, whichever is less for information received after the effective date of the final rule to 15 percent of the final amounts collected applied to the first $66,000,000 for the sanctionable conduct. It is important to note that the degree of specificity in the information provided is significant because a tip needs to provide sufficient information to start a review or investigation by CMS or law enforcement or otherwise lead to the collection of amounts for sanctionable conduct before an individual is eligible for a reward.

At § 420.405(e)(3), we propose to limit eligibility for a reward to the first individual who provides us with specific information on a provider or supplier that is engaging in, or has engaged in, acts or omissions that constitute grounds for the imposition of a sanction under section 1128, section 1128A or section 1128B of the Act or that has otherwise engaged in sanctionable fraud and abuse that leads to a review or investigation by CMS or law enforcement or other actions that result in the imposition of a sanction. Once we receive information on a specific provider or supplier for a specific time period of the alleged sanctionable conduct, we will consider the provider or supplier to be subject to a review or investigation by CMS, its

[6] The Internal Revenue Service First Report to Congress on the Whistleblower Program, available at *http://www.irs.gov/pub/whistleblower/whistleblower_annual_report.pdf.*

[7] See the IRS Web site at *http://www.irs.gov/pub/whistleblower/whistleblower_annual_report.pdf.*

contractors, or its law enforcement partners.

In § 420.405 (f)(1), we propose to remove the reference to the submission of information regarding sanctionable conduct to Medicare intermediaries or carriers. We refer generally to the CMS contractor that has jurisdiction.

In new paragraph (f)(3), we propose to add a requirement that upon notification of eligibility, or when otherwise required by CMS, an individual must complete an attestation stating that he or she is not participating and has not participated in the sanctionable conduct, is not otherwise ineligible to receive a reward, that the information he or she has furnished is accurate and truthful to the best of their knowledge, and that he or she acknowledges that knowingly failing to provide truthful information could subject him or her to potential civil and criminal liability. Section 203(b) of HIPAA directs us to discourage the provision of, and to not consider, information that is frivolous or irrelevant to the imposition of a sanction. An attestation may discourage individuals from furnishing baseless reports of sanctionable conduct. We are soliciting comments on whether we should adopt the proposed approach of requiring the completion of an attestation, the timing of the attestation, and on the content of any attestation.

In revised § 420.405 (h)(1), we propose to clarify that CMS reserves its right to recover a reward from the individual if CMS finds that the individual was ineligible for the reward. In new paragraph (h)(2), we propose that CMS would notify an individual in writing of our determination of ineligibility, and request a full refund within 30 days. We are soliciting comments on whether CMS should provide an appeals process, and what such an appeals process may consist of. We are also soliciting comments on whether an individual may request that CMS review and waive the request for a full refund of the reward. We note that our proposed IRP revisions would not apply to information furnished under § 420.405 before the effective date of the final rule.

Given the aforementioned proposed revisions, we would make the following regulatory changes to § 420.405:

- In new paragraph (a)(1), we propose to incorporate the first sentence of existing § 420.405(a).
- In new paragraph (a)(2), we propose to reemphasize that the determinations as to whether the eligibility criteria are met are at the exclusive discretion of CMS.
- In new paragraph (a)(3), we propose to incorporate the last sentence of existing § 420.405. When CMS applies the criteria specified in paragraphs (b), (c), and (e) of this section to determine the eligibility and the amount of the reward, it notifies the individual as specified in paragraph (d) of this section.
- In a new paragraph (b)(3), we propose to add that CMS does not give a reward if the same or substantially similar information was the basis of payment for a relator's share of the amounts collected under the False Claims Act or any state False Claims Act.
- In new paragraph (c)(2)(v), we propose to clarify that an individual is not eligible for the IRP if he or she is eligible for a reward for furnishing the same or substantially similar information to the federal government under any other federal reward program or payment under federal law.
- In paragraph (e)(2), we propose to change the reward structure from 10 percent of the recovered overpayments not to exceed $1,000, to 15 percent of the final amounts collected applied to the first $66,000,000 for sanctionable conduct for information received after the effective date of the final rule.
- In paragraph (e)(3), we propose to limit eligibility for a reward to the first individual who provides us with specific information, defined in paragraph (b), on a specific individual or entity that is engaging in, or has engaged in, acts or omissions that constitute grounds for the imposition of a sanction under sections 1128, 1128A or 1128B of the Act or that has otherwise engaged in sanctionable fraud and abuse against the Medicare program that leads to the imposition of a sanction.
- In paragraph (f)(1), we propose to remove the reference to submitting information regarding fraud and abuse to Medicare intermediaries or carriers, and propose to add new paragraphs (f)(1)(i) identifying the Office of Inspector General and (f)(1)(ii) identifying CMS or the CMS contractor that has jurisdiction of the provider.
- In new paragraph (f)(3), we propose to add a requirement that upon notification of eligibility, an individual must complete an attestation stating that he or she is not participating and has not participated in the sanctionable act, is not otherwise ineligible to receive a reward under paragraph (c)(2), that the information he or she has furnished is accurate and truthful to the best of their knowledge, and that he or she acknowledges that knowingly failing to provide truthful information could subject him or her to potential criminal and/or civil liability.
- In revised paragraph (h)(1), we propose to modify the current paragraph at (h) to clarify that CMS reserves its right to recover a reward from the individual.
- In new paragraph (h)(2), we propose that CMS would notify an individual in writing of our determination of ineligibility, and request a full refund within 30 days.

B. Provider Enrollment

As noted previously, in April 2006 we published a final rule that set forth requirements that providers and suppliers must meet in order to obtain and maintain Medicare billing privileges. Since the final rule's publication, we have revised and supplemented certain provisions in part 424, subpart P to address various payment safeguard issues. In this proposed rule, we are revising the provider enrollment regulatory provisions identified in this section.

1. Definition of Enrollment

Most physicians and nonphysician practitioners enroll in Medicare to receive payment for covered services furnished to Medicare beneficiaries. However, some physicians and nonphysician practitioners who are not enrolled in Medicare via the Form CMS–855I enrollment application may wish to enroll for the sole purpose of ordering or certifying items or services for Medicare beneficiaries. Consistent with § 424.507, these individuals can become eligible to do so, assuming all other applicable requirements are met, by completing the CMS–855O via a paper application or via the Internet-based Provider Enrollment, Chain, and Ownership System (PECOS) process. The use of the CMS–855O (OMB Approval # 0938–0685), which began in July 2011, is exclusively designed to allow physicians and eligible professionals to enroll in Medicare solely to order or certify items or services.

Physicians and nonphysician practitioners who complete the CMS–855O are not eligible to send claims to Medicare for services they provide, as they are not granted Medicare billing privileges. We believe that several of our existing regulatory provisions do not, as currently written, adequately articulate the distinction between enrolling in Medicare: (1) To obtain Medicare billing privileges; and (2) solely to order or certify items or services for Medicare beneficiaries. We believe it is important to clarify that suppliers who enroll solely to order or certify cannot bill the

Medicare program and are not granted Medicare billing privileges.

Therefore, we are proposing the following regulatory changes:

• The first involves the definition of ''Enroll/enrollment'' in § 424.502. The initial sentence of the definition currently reads: ''Enroll/enrollment means the process that Medicare uses to establish eligibility to submit claims for Medicare covered services and supplies.'' We propose to revise this to state: ''Enroll/enrollment means the process that Medicare uses to establish eligibility to submit claims for Medicare covered items and services, and the process that Medicare uses to establish eligibility to order or certify for Medicare-covered items and services.'' This is to clarify that the overall enrollment process includes enrollment via the CMS–855O.

• We also propose to change paragraph (4) of § 424.502 in the definition of ''Enroll/enrollment'' from ''(g)ranting the provider or supplier Medicare billing privileges'' to the following: ''(4) Except for those suppliers that complete the CMS–855O form or CMS-identified equivalent or successor form or process for the sole purpose of obtaining eligibility to order or certify Medicare-covered items and services, granting the Medicare provider or supplier Medicare billing privileges.'' This is to emphasize that while enrollment via the CMS–855O enables the supplier to order or certify Medicare-covered items and services, it does not convey Medicare billing privileges to the supplier.

• The last change involves § 424.505. This section states that a provider or supplier, once enrolled, receives Medicare billing privileges. We propose to revise the second sentence of this section to state: ''Except for those suppliers that complete the CMS–855O or CMS-identified equivalent or successor form or process for the sole purpose of obtaining eligibility to order or certify Medicare covered items and services, once enrolled the provider or supplier receives billing privileges and is issued a valid billing number effective for the date a claim was submitted for an item that was furnished or a service that was rendered. (See 45 CFR part 162 for information on the National Provider Identifier and its use as the Medicare billing number.)'' Again, we wish to stress that enrollment via the CMS–855O enables the supplier to order or certify Medicare-covered items and services but does not grant Medicare billing privileges to a supplier.

Given the proposals noted previously, we would make the following regulatory changes to 42 CFR part 424, subpart P:

• In § 424.502, we propose to change the first sentence to state: ''Enroll/enrollment means the process that Medicare uses to establish eligibility to submit claims for Medicare covered items and services, and the process that Medicare uses to establish eligibility to order or certify Medicare-covered items and services.''

• We also propose to revise paragraph (4) in § 424.502 to read: ''(4) Except for those suppliers that complete the CMS–855O form or CMS-identified equivalent or successor form or process for the sole purpose of ordering or certifying Medicare covered items and services, granting the Medicare provider or supplier Medicare billing privileges.''

• In § 424.505, we propose to change the second sentence to read: ''Except for those suppliers that complete the CMS–855O form or CMS-identified equivalent or successor form or process for the sole purpose of ordering or certifying Medicare covered items and services, once enrolled the provider or supplier receives billing privileges and is issued a valid billing number effective for the date a claim was submitted for an item that was furnished or a service that was rendered. (See 45 CFR part 162 for information on the National Provider Identifier and its use as the Medicare billing number.)''

2. Debts to Medicare

Section 424.530(a) lists a number of reasons for which a provider or supplier's Medicare enrollment application may be denied. Under § 424.530(a)(6), an application can be denied if ''[t]he current owner (as defined in § 424.502), physician or nonphysician practitioner has an existing overpayment at the time of filing of an enrollment application.'' This provision was established in large part to address situations in which the owner of a provider or supplier incurs a substantial debt to Medicare, exits the Medicare program or shuts down operations altogether, and attempts to re-enroll through another vehicle or under a new business identity. Indeed, such situations were discussed in a November 2008 Department of Health and Human Services Office of Inspector General (OIG) Early Alert Memorandum titled ''Payments to Medicare Suppliers and Home Health Agencies Associated with 'Currently Not Collectible' Overpayments'' (OEI–06–07–00080). The memorandum stated that anecdotal information from OIG investigators and assistant United States Attorneys indicated that DMEPOS suppliers with outstanding Medicare debts may inappropriately receive Medicare payments by, among other means, operating businesses that are publicly fronted by business associates, family members, or other individuals posing as owners.[8] In its study, the OIG selected a random sample of 10 DMEPOS suppliers in Texas that each had Medicare debt of at least $50,000 deemed currently not collectible (CNC) by CMS during 2005 and 2006.[9] The OIG found that 6 of the 10 reviewed DMEPOS suppliers were associated with 15 other DMEPOS suppliers or HHAs that received Medicare payments totaling $58 million during 2002 through 2007.[10] Most associated DMEPOS suppliers had lost billing privileges by January 2005 and had accumulated a total of $6.2 million of their own CNC debt to Medicare.[11] The OIG also found that most of the reviewed DMEPOS suppliers were connected with their associated DMEPOS suppliers and HHAs through shared owners or managers.[12]

Since this memorandum was issued, we have continued to receive reports of providers, suppliers, and owners thereof accumulating large Medicare debts, departing Medicare, and then attempting to reenter the program through other channels—often to incur additional debts. While the current version of § 424.530(a)(6) gives us the ability to stem this practice to a certain extent, it is limited to situations where an enrolling physician, nonphysician practitioner, or an owner of the enrolling provider or supplier has a current Medicare overpayment. It does not apply to instances where an enrolling provider or supplier entity has a current Medicare debt, be it an overpayment or some other type of financial obligation to the Medicare program. Furthermore, it does not address cases where an entity that the enrolling provider, supplier or owner was affiliated with had incurred the debt. We believe that these latter situations were of particular concern to the OIG in the aforementioned report. They remain of concern to us as well. Therefore, to enhance the existing authority in § 424.530(a)(6), we propose several changes.

a. New Paragraph § 424.530(a)(6)(i)

We propose to incorporate the existing language of § 424.530(a)(6) into

[8] Department of Health and Human Services, Office of Inspector General (OIG). ''Early Alert Memorandum: Payments to Medicare Suppliers and Home Health Agencies Associated with 'Currently Not Collectible' Overpayments'' (OEI–06–07–00080), November 26, 2008, p.1.

[9] Ibid. p.1.

[10] Ibid. p.7.

[11] Ibid. p.7

[12] Ibid. p.2.

a new paragraph (a)(6)(i) that would apply to all enrolling providers, suppliers (including physicians and nonphysician practitioners), and owners thereof. We do not believe that the purview of the current version of (a)(6) should be limited to individual physicians and nonphysician practitioners. All providers and suppliers, regardless of type, are responsible for reimbursing Medicare for the debts they owe to the program. Permitting them to enroll additional provider or supplier sites in Medicare when they have existing debts to Medicare potentially endangers the Trust Fund. If the provider or supplier cannot repay its existing Medicare debts, this raises questions about its ability to pay future debts incurred as part of any additional enrollments. In addition, we note that physicians and nonphysician practitioners fall within the ''limited'' level of categorical risk under § 424.518. To not include other provider and supplier types of equal or greater risk—such as hospices and IDTFs, which are classified as ''moderate'' risk under § 424.518—within the scope of proposed § 424.530(a)(6)(i) would only add to the existing threat to the Trust Fund posed by providers and suppliers that fail to repay their Medicare debts.

Notwithstanding these concerns, a denial of Medicare enrollment under paragraph (a)(6)(i) could be avoided if the enrolling provider, supplier, or owner thereof satisfies the criteria set forth in § 401.607 and agrees to an extended CMS-approved repayment schedule for the entire outstanding Medicare debt. We believe this provision is appropriate because an agreement to a CMS-approved repayment plan indicates that the provider, supplier, or owner is not seeking to avoid its debts to Medicare. The provider, supplier, or owner thereof could also, of course, avoid denial by simply repaying the debt in full. We solicit comment on whether the scope of our proposed revision to § 424.530(a)(6)(i) should be expanded to include the enrolling provider or supplier's managing employees (as that term is defined in § 424.502), corporate officers, corporate directors, and/or board members.

We note that the term ''overpayment'' as currently used in § 424.530(a)(6) would be changed to ''Medicare debt'' in our regulatory text. We believe that the latter term more appropriately describes the types of debts that are subject to (a)(6). Moreover, as indicated earlier, we believe that our denial authority under proposed (a)(6) should include all forms of debt to Medicare, not just overpayments. It is the fact that a debt exists, rather than the specific type of debt involved, that is of concern to us. We nonetheless solicit comments on: (1) our proposal to replace the term ''overpayment'' with ''Medicare debt'' and our rationale for the change; and (2) the appropriate scope of the term ''Medicare debt'' for purposes of § 424.530(a)(6) only, specifically whether there are certain types of debts that should or should not fall within the purview of § 424.530(a)(6).

b. New Paragraph § 424.530(a)(6)(ii)

We propose in new paragraph § 424.530(a)(6)(ii) that a denial of Medicare enrollment is warranted if the provider, supplier or current owner (as defined in § 424.502) thereof was the owner (as defined in § 424.502) of another provider or supplier that had a Medicare debt that existed when the latter's enrollment was voluntarily or involuntarily terminated or revoked, and the following criteria are met:

- The owner left the provider or supplier that had the Medicare debt within 1 year of that provider or supplier's voluntary termination, involuntary termination, or revocation.
- The Medicare debt has not been fully repaid.
- We determine that the uncollected debt poses an undue risk of fraud, waste, or abuse.

Similar to proposed § 424.530(a)(6)(i), we propose that the enrolling provider or supplier would be able to avoid a denial under § 424.530 (a)(6)(ii) if the enrolling provider, supplier or owner thereof agrees to an extended repayment schedule for the entire outstanding Medicare debt of the revoked provider or supplier. Again, we believe this provision is warranted because agreement to a repayment plan evidences an intention to pay back the debt. Also, no denial would occur under paragraph (a)(6)(ii) if the debt was repaid in full.

As discussed earlier, the difference between our proposed addition and the existing language in § 424.530(a)(6) is that the latter involves situations in which the current owner, physician or nonphysician practitioner had a Medicare debt. However, our proposed addition focuses on the entity with which the enrolling provider, supplier, or owner thereof had a prior relationship. That is, the ''prior entity'' had a debt to Medicare rather than the enrolling provider, supplier, or owner thereof. Consider the following illustration: Provider X is applying for enrollment in Medicare. Y owns 50 percent of X. Y was also a 20 percent owner of Supplier Entity Z, which was revoked from Medicare 12 months ago and currently has a large outstanding Medicare debt. The current version of § 424.530(a)(6) could not be used to deny X's application because X's current owner (Y) does not have a Medicare debt. Rather, the entity with which Y was associated (Z) has the debt. Under proposed § 424.530(a)(6)(ii), however, and assuming the criteria identified therein are met, X's application could be denied because X's owner was an owner of a supplier (Z) that has a Medicare debt.

Again, we believe that our proposed provision is necessary to further address cases in which individuals and entities depart Medicare with substantial Medicare debts and attempt to re-enter the program via other vehicles in order to avoid these financial obligations. We further believe that, as with proposed § 424.530(a)(6)(i), proposed paragraph (ii): (1) may enhance our debt recovery efforts by spurring individuals and entities seeking to enroll in Medicare to facilitate the repayment of the debts of the organizations with which they were associated; and (2) would protect the Medicare Trust Fund by preventing individuals and entities intent on reentering Medicare and falsely billing the program and incurring additional Medicare debts.

The authority for our proposed change is section 1866(j)(5) of the Act, codified at 42 U.S.C. 1395cc(j)(5) and which was established by section 6401(a)(3) of the Affordable Care Act. Section 1866(j)(5) states the following:

- A provider of medical or other items or services or supplier who submits an application for enrollment or revalidation of enrollment in the program under this title, title XIX, or title XXI on or after the date that is 1 year after the date of enactment of this paragraph shall disclose (in a form and manner and at such time as determined by the Secretary) any current or previous affiliation (directly or indirectly) with a provider of medical or other items or services or supplier that has uncollected debt, has been or is subject to a payment suspension under a federal health care program (as defined in section 1128B(f) of the Act), has been excluded from participation under the program under this title, the Medicaid program under title XIX, or the CHIP program under title XXI, or has had its billing privileges denied or revoked.
- If the Secretary determines that such previous affiliation poses an undue risk of fraud, waste, or abuse, the Secretary may deny such application. Such a denial shall be subject to appeal in accordance with paragraph [(8)].

Under section 1866(j)(5) of the Act, therefore, providers and suppliers seeking to enroll in or revalidate their enrollment in Medicare must disclose any current or previous direct or indirect affiliation with a provider or supplier that has uncollected debt. The disclosing provider or supplier's application can be denied if we believe that the affiliation poses an undue risk of fraud, waste, or abuse. We believe that our proposed addition is entirely consistent with section 1866(j)(5) of the Act, in that the application would be denied only if the ''undue risk'' threshold is met. We would determine whether such a risk exists by considering various factors, including, but not limited to the following:

- The amount of the Medicare debt.
- The length and timeframe that the enrolling provider, supplier, or owner thereof was an owner of the prior entity.
- The percentage of the enrolling provider's, supplier's, or owner's ownership of the prior entity.

The scope and breadth of ownership interests will vary widely (for example, the amount of ownership; direct versus indirect ownership). For this reason, we must reserve for ourselves the flexibility to deal with each situation on a case-by-case basis, utilizing the factors previously outlined. However, we are soliciting comment on the following issues related to these factors:

- Whether additional factors should be considered and, if so, what those factors should be.
- Which, if any, of the factors previously identified should not be considered.
- Which, if any, factors should be given greater or lesser weight than others.
- Whether a minimum or maximum threshold for consideration should be established for the ''amount of Medicare debt'' and ''percentage of ownership'' factors.

We also solicit comment on whether the purview of our proposed revision to § 424.530(a)(6) should be expanded to include the enrolling entity's current managing employees (as that term is defined in § 424.502), corporate officers, corporate directors, and/or board members.

We note that while we are only proposing to implement the overarching rationale of section 1866(j)(5) of the Act with respect to Medicare debts, we are continuing to consider implementation options regarding the previously cited provisions of section 1866(j)(5) of the Act that address exclusions, payment suspensions, denials, and revocations.

Given this, we propose to revise § 424.530(a)(6) as follows:

- In paragraph (a)(6)(i), we propose that a denial of Medicare enrollment is warranted if the enrolling provider, supplier, or owner thereof has an existing Medicare debt. A denial of Medicare enrollment under this paragraph can be avoided if the enrolling provider, supplier, or owner thereof satisfies the criteria set forth in § 401.607 and agrees to a CMS-approved extended repayment schedule for the entire outstanding Medicare debt or pays the debt in full.
- In paragraph (a)(6)(ii), we propose that a denial of Medicare enrollment is warranted if the enrolling provider, supplier, or owner thereof was the owner of another Medicare provider or supplier that had a Medicare debt that existed when the latter's enrollment was voluntarily or involuntarily terminated or revoked, and the following criteria are met:

++ The owner left the provider or supplier that had the Medicare debt within 1 year of that provider or supplier's voluntary termination, involuntary termination, or revocation.

++ The Medicare debt has not been fully repaid.

++ We determine that the uncollected debt poses an undue risk of fraud, waste, or abuse.

A denial of Medicare enrollment under this paragraph can be avoided if the enrolling provider, supplier, or owner thereof satisfies the criteria set forth in § 401.607 and agrees to a CMS-approved extended repayment schedule for the entire outstanding Medicare debt.

3. Felony Convictions

Under § 424.530(a)(3) and § 424.535(a)(3), respectively, we may deny or revoke a provider or supplier's Medicare billing privileges if the provider or supplier—or any owner of the provider or supplier—has, within the 10 years preceding enrollment or revalidation of enrollment, been convicted of a federal or state felony offense that CMS has determined to be detrimental to the best interests of the Medicare program and its beneficiaries. Under § 424.535(a)(3)(i), as currently codified, such offenses include the following:

- Felony crimes against persons, such as murder, rape, assault, and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions.
- Financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions.
- Any felony that placed the Medicare program or its beneficiaries at immediate risk, such as a malpractice suit that results in a conviction of criminal neglect or misconduct.
- Any felonies that would result in mandatory exclusion under section 1128(a) of the Act.

(Section 424.530(a)(3)(i) mirrors § 424.535(a)(3)(i) with the exception of paragraph (D), which uses the phrase: ''Any felonies outlined in section 1128 of the Act.'')

We propose to make the following changes to § 424.530(a)(3) and § 424.535(a)(3):

- To modify the list of felonies in each section such that any felony conviction—including guilty pleas and adjudicated pretrial diversions—that we have determined to be detrimental to the best interests of the Medicare program and its beneficiaries would constitute a basis for denial or revocation. This would give us the discretion to deny or revoke enrollment based on any felony conviction that we believe to be detrimental to the best interests of Medicare and its beneficiaries. There are several reasons for this change:

++ In light of the very serious nature of any felony conviction, we believe it is unwise to restrict our authority in § 424.530(a)(3)(i) and § 424.535(a)(3)(i) to the categories of felonies identified in (a)(3)(i); this is especially true considering that the types of felony offenses often vary from state to state. Any felony conviction, regardless of the type, raises real questions as to whether the provider or supplier can be relied upon to be a trustworthy partner in the Medicare program, and it is important to do everything possible to prevent unnecessary risks to Medicare beneficiaries and the Medicare Trust Fund. That stated, we are aware that certain felony convictions may raise more concerns than others, and we will continue to carefully assess the types of felony convictions that pose greater risk to Medicare beneficiaries and the Medicare Trust Fund.

We note that in the April 2006 final rule (77 FR 20760), in which we finalized the provisions in § 424.530(a)(3) and § 424.535(a)(3), we stated that we were relying upon the authority afforded to us in many of the HIPAA fraud and abuse provisions and section 4302 of the BBA. We are relying upon this same authority with respect to our proposed change.

++ The current list of felonies in § 424.530(a)(3) and § 424.535(a)(3) includes many felonies but does not encompass all felonies. In order to allow us discretion to deny or revoke

enrollment based on any felony conviction that we believe is detrimental to the Medicare program or its beneficiaries, we propose to eliminate the enumerated list of felonies and instead provide that enrollment may be denied or revoked based upon any such felony conviction.

• We propose to expand § 424.530(a)(3) and § 424.535(a)(3) to include felony convictions against a provider or supplier's ''managing employee,'' as that term is defined in § 424.502. We have found numerous instances in which a particular managing employee of a provider or supplier has as much, if not more, control of and involvement with the entity as does the owner. We believe that managing employees should be held to the same standard as owners in this regard. Clearly, having a managing employee with a felony conviction raises questions about whether the provider or supplier can be a responsible participant in the Medicare program.

• In § 424.530(a)(3) and § 424.535(a)(3), we propose to change the language ''within the 10 years preceding enrollment or revalidation of enrollment'' to ''within the preceding 10 years.'' The existing language has caused confusion as to how far back the 10-year period actually goes. We believe that our proposed wording is clearer and more straightforward.

• In § 424.530(a)(3) and § 424.535(a)(3), we propose to state that the term ''convicted''—as used in these two sections—has the same definition as the one set forth in 42 CFR 1001.2. We have received inquiries over the years regarding the proper interpretation of the term ''convicted'' as it is used in the context of § 424.530(a)(3) and § 424.535(a)(3). We believe that utilizing a well-established regulatory definition of the term would clarify for the public the types and scopes of convictions that fall within the purview of these two sections. We note that this regulatory definition is based on the definition of ''convicted'' in section 1128(i) of the Act.

In light of the foregoing discussion, § 424.530(a)(3) and § 424.535(a)(3) would be revised as follows:

• In § 424.530(a)(3)—

++ We propose to combine the opening paragraph and existing paragraph (a)(3)(i) into a revised paragraph (a)(3)(i) that would state: ''The provider, supplier, or any owner or managing employee of the provider or supplier was, within the preceding 10 years, convicted (as that term is defined in 42 CFR 1001.2) of a federal or state felony offense that CMS has determined to be detrimental to the best interests of the Medicare program and its beneficiaries.''

++ We also propose to delete paragraphs (a)(3)(i)(A) through (D).

++ Existing paragraph (a)(3)(ii) would remain intact.

• In § 424.535—

++ We propose to combine the introductory text and existing paragraph (a)(3)(i) into a revised paragraph (a)(3)(i) that would read: ''The provider, supplier, or any owner or managing employee of the provider or supplier was, within the preceding 10 years, convicted (as that term is defined in 42 CFR § 1001.2) of a federal or state felony offense that CMS has determined to be detrimental to the best interests of the Medicare program and its beneficiaries.''

++ We propose to make changes to paragraph (c). See section II.G. of this proposed rule for more information about our proposed change to paragraph (c).

4. Abuse of Billing Privileges

Section 424.535(a)(8) states that a provider or supplier's Medicare billing privileges may be revoked if the provider or supplier submits a claim or claims for services that could not have been furnished to a specific individual on the date of service. These instances include, but are not limited to, situations where the beneficiary is deceased, the directing physician or beneficiary is not in the state or country when services were furnished, or when the equipment necessary for testing is not present where the testing is said to have occurred.

We propose to expand this revocation reason by adding a new paragraph (a)(8)(ii) to § 424.535. (The existing revocation reason will be incorporated into a new paragraph (a)(8)(i).) Our proposed new paragraph (a)(8)(ii) would permit revocation if we determine that the provider or supplier has a pattern or practice of billing for services that do not meet Medicare requirements such as, but not limited to, the requirement that the service be reasonable and necessary. This revocation reason would differ from that in paragraph (a)(8)(i) in two ways. First, while the former deals with individual claims, paragraph (a)(8)(ii) addresses overall billing patterns. Second, paragraph (a)(8)(i) addresses situations involving claims for services that could not have been furnished. Paragraph (a)(8)(ii) would deal with cases where the services were furnished but the claims do not meet Medicare requirements.

We believe that our proposed revocation reason is important because it would place providers and suppliers on notice that they are under a legal obligation to always submit correct and accurate claims. Providers and suppliers would know that a failure to do so may result in the revocation of their Medicare billing privileges if such failures establish a pattern of incorrect or inaccurate claims. Because the current revocation reason at § 424.535 (a)(8), again, focuses on individual claims and not on the submission of numerous claims over an extended period of time, we are proposing this authority so we may have the discretion to also revoke based on a pattern of inaccurate or erroneous claim submissions. We believe that a provider or supplier should be responsible for submitting valid claims at all times and that the provider or supplier's repeated failure to do so poses a risk to the Medicare Trust Fund.

While we solicit comment on what should qualify as a ''pattern or practice'' under our proposed change, we envision that a common—though by no means the only—scenario in which proposed § 424.535(a)(8)(ii) could apply would be one where a provider or supplier is placed on prepayment review and a significant number of its claims are denied for failing to meet medical necessity requirements over time. Indeed, any situation in which an unusually or abnormally high volume of claims are denied over time because they do not meet Medicare requirements could potentially trigger § 424.535(a)(8)(ii), though much would depend, of course, on the particular facts of the situation. In each case, we would take into account several factors, including, but not limited to the following:

• The percentage of submitted claims that were denied.

• The total number of claims that were denied.

• The reason(s) for the claim denials.

• Whether the provider or supplier has any history of ''final adverse actions'' (as that term is defined under § 424.502).

• The length of time over which the pattern has continued.

• How long the provider or supplier has been enrolled in Medicare.

With respect to these factors, we solicit comment on the following:

• Whether additional factors should be considered and, if so, what those factors should be.

• Which, if any, of these factors should not be considered.

• Which, if any, of these factors should be given greater or lesser weight than others.

• Whether a minimum or maximum threshold for consideration should be established for the ''percentage of claims denied'' and ''total number of claims denied'' factors.

We also solicit comment on whether there should be a set knowledge standard associated with our proposed provision—specifically, whether revocation is warranted only if the provider or supplier submitted the claims in question with ''reckless disregard'' as to their accuracy or the provider ''knew or should have known'' that the claims did not meet Medicare requirements.

We wish to emphasize and to reassure the provider and supplier communities that proposed § 424.535(a)(8)(ii) is not meant to be used to revoke providers and suppliers for isolated and sporadic claim denials or for innocent errors in billing. Our focus is instead on situations where a provider or supplier regularly fails to submit accurate claims in such a way as to—when considering the factors previously mentioned—pose a risk to the Medicare Trust Fund. We further note that as with any revocation of Medicare billing privileges, the provider or supplier may appeal a revocation based on § 424.535(a)(8)(ii).

Given this, § 424.535(a)(8) would be revised to—

• Add a new paragraph (a)(8)(ii) that states: ''CMS determines that the provider or supplier has a pattern or practice of submitting claims for services that fail to meet Medicare requirements.''

• Incorporate the existing language in § 424.535(a)(8) into a new paragraph (i).

5. Post-Revocation Submission of Claims

In the November 19, 2008 **Federal Register** (73 FR 69726), we published a final rule with comment period titled, ''Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Part B for CY 2009; and Revisions to the Amendment of the E-Prescribing Exemption for Computer Generated Facsimile Transmissions,'' (hereinafter referred to as the CY 2009 PFS final rule). In that rule, we finalized a provision in § 424.535(h) stating that a revoked physician organization, physician, nonphysician practitioner or IDTF must submit all claims for items and services furnished within 60 calendar days of the effective date of the revocation.

Our rationale for this policy was outlined in the CY 2009 PFS proposed rule, published in the July 7, 2008 **Federal Register** (73 FR 38539). We noted that we had historically allowed revoked providers and suppliers to continue billing for services furnished prior to revocation for up to 27 months after the revocation effective date. We stated that this extensive post-revocation period posed a significant risk to the Medicare program and that the change to 60 days was necessary to limit Medicare's exposure to future vulnerabilities from revoked physician and nonphysician practitioner organizations and individual practitioners. We further noted that some physician and nonphysician practitioner organizations and individual practitioners were able to create false documentation to support claims payment and that our proposed change would allow Medicare to conduct focused medical review on the submitted claims to ensure that they are supported by verifiable medical documentation.

Indeed, our rationale for our expansion of § 424.535(h) is the same as that which we expressed in the CY 2009 PFS proposed rule. It is important that we limit the Medicare program's exposure to fraudulent claims. We believe that the longer a post-revocation timeframe a revoked provider or supplier has, the more opportunity the provider or supplier would have to submit false claims. Under § 424.518(c)(3)(ii), in fact, a revoked provider or supplier falls within the ''high'' categorical risk level. This heightened risk posed by revoked providers and suppliers, combined with the lengthy 12-month period they currently have for submitting claims, threatens the Medicare Trust Fund. Therefore, we believe that an expansion of § 424.535(h) to include all revoked providers and suppliers is warranted.

We propose to expand the purview of § 424.535(h) to include all revoked Medicare providers and suppliers, regardless of type (for example, DMEPOS suppliers, rural health clinics, skilled nursing facilities). All providers and suppliers, with the exception of home health agencies (HHAs), would have 60 days after the effective date of their revocation to submit their remaining claims for services furnished prior to the date of the revocation letter; for HHAs, the date would be 60 days after the later of: (1) The effective date of their revocation; or (2) the date that the HHA's last payable episode ends. The reason for the modification for HHAs is that under current CMS policy, an HHA can bill for episodes that began before it was terminated and be paid for up to 30 days following the termination date. The HHA would need to wait to bill those episodes until they were complete, which could be day 59 after the termination, giving the HHA 1 day to bill. Thus, we believe that 60 days after the later of: (1) the effective date of their revocation; or (2) the date that the HHA's last payable episode ends would be reasonable.

We note that nothing in our proposed revision to § 424.535(h) would impact the requirements of § 424.44 regarding the timely filing of claims.

Given this, and as stated previously, we propose in § 424.535(h) to require that a revoked provider or supplier (excluding HHAs) submit, within 60 days after the effective date of the revocation, all claims for items and services furnished prior to the date of the revocation letter. For HHAs, the date would be 60 days after the later of: (1) The effective date of the revocation; or (2) the date that the HHA's last payable episode ends.

6. Effective Date of Billing Privileges

Under § 424.520(d), the effective date of billing privileges for physicians, nonphysician practitioners, and physician and nonphysician practitioner organizations is the later of: (1) the date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or (2) the date an enrolled physician or nonphysician practitioner first began furnishing services at a new practice location. This policy was proposed in the CY 2009 PFS proposed rule. It was meant to address our concerns about providers and suppliers being able to bill for Medicare services rendered well prior to enrollment. We explained in that proposed rule that our proposed approach was not only consistent with our requirements found at § 410.33(i) that limit the retrospective billing for IDTFs, but also that it was not possible to verify that a supplier has met all of Medicare's enrollment requirements prior to submitting an enrollment application. Thus, the Medicare program should not be billed for services before the later of the two aforementioned dates.

We propose to expand the scope of § 424.520(d) to include ambulance suppliers. Ambulance suppliers as a class pose an elevated risk to the Medicare program—higher, in fact, than the physician and nonphysician practitioner categories already identified in § 424.520(d). In a January 2006 OIG report entitled, ''Medicare Payments for Ambulance Transports'' (OEI–05–02–000590), the OIG found that 25 percent of ambulance transports did not meet Medicare's program requirements; this resulted in an estimated $402 million in improper payments. We have also seen an overabundance of ambulance

suppliers and an overutilization of ambulance services in particular regions of the country, which has raised questions as to the qualifications and integrity of some ambulance suppliers. In certain areas of ambulance supplier fraudulent activity, for instance, we have received claims for ambulance transports to hospitals with no associated hospital claims. These program integrity issues involving ambulance suppliers heighten our concerns about our inability to conclusively verify that a supplier was in compliance with Medicare's enrollment requirements during the months prior to submitting an enrollment application. It is this concern that leads us to the conclusion that allowing an ambulance supplier to ''back bill'' for services furnished well before enrollment dramatically increases the risk of improper payments and endangers the Medicare Trust Fund. Therefore, we believe that expanding § 424.520(d) to include these elevated risk suppliers is justified.

While we are not including other categories of providers and suppliers in the ''moderate'' or ''high'' screening level under § 424.518 (such as newly enrolling HHAs, community mental health centers and comprehensive outpatient rehabilitation centers), we note that the enrollment process for most of these other providers and suppliers is more extensive than that for ambulance suppliers because it involves certification. An enrolling ambulance supplier submits a CMS–855B application to its Medicare contractor, which reviews the application, performs all necessary verifications, and renders a final decision. However, for certified providers and certified suppliers, the applicant provider or supplier makes a request to its state Survey Agency (SA) for Medicare participation and submits a Medicare enrollment application to its Medicare contractor, which reviews the application, performs the required validations and, if a recommendation for approval is made, typically refers its recommendation to the SA. Thereafter, a survey that determines the applicant provider's or supplier's compliance with the applicable Medicare conditions or requirements will be conducted by the SA or a CMS-approved accrediting organization. If the applicant provider or supplier is determined to be in compliance with its Medicare conditions or requirements for Medicare participation, the SA will make its recommendation to the CMS regional office (RO) for review. If the RO determines that the applicant provider or supplier has met all federal requirements for Medicare participation, including all enrollment requirements, the RO issues an effective date for Medicare participation in accordance with § 489.13, and Medicare billing privileges would be conveyed. However, under § 489.13 the effective date of a Medicare provider agreement or supplier approval may not be earlier than the latest date on which all applicable federal requirements have been met; such requirements include the Medicare contractor's review and verification of the provider/supplier's CMS–855 application. A certified provider or supplier is not eligible for Medicare payment of any services provided prior to the effective date of its Medicare provider agreement or supplier approval.

Because of the exhaustive and extensive review process involved with certified providers and certified suppliers and the existing limitations posed by § 489.13 on the ability of certified providers and certified suppliers to ''backbill'' for services, we have decided not to include these providers and suppliers in our proposal at this time. Ambulance suppliers, on the other hand, do not have this multilayered review process, which makes it more difficult to determine whether they met enrollment requirements 12 months previously. It is for these reasons that we are limiting our expansion of § 424.520(d) to ambulance companies. We solicit comment on whether any other non-certified provider or non-certified supplier type that is not currently subject to a backbilling restriction similar to the one we are proposing should be included within the purview of our proposal.

Given these factors, we would revise § 424.520(d) to include ambulance suppliers.

7. Effective Date of Re-Enrollment Bar

Under § 424.535(c), a revoked provider, supplier, delegated official, or authorizing official is barred from participating in Medicare from the effective date of the revocation until the end of the re-enrollment bar. The re-enrollment bar, as mentioned previously, is a minimum of 1 year, but not greater than 3 years, depending on the severity of the basis for revocation. In accordance with § 424.535(g), the effective date of a revocation is either of the following:—

- Thirty days after CMS or the CMS contractor mails notice of its determination to the provider or supplier.
- If the revocation is based on a federal exclusion or debarment, felony conviction, license suspension or revocation, or the practice location is determined by CMS or its contractor not to be operational, the date of exclusion, debarment, felony conviction, license suspension or revocation or the date that CMS or its contractor determined that the provider or supplier was no longer operational.

We propose to revise § 424.535(c) to specify that all re-enrollment bars begin 30 days after CMS or the CMS contractor mails notice of the revocation determination to the provider or supplier. The reason for this change is to address situations where the revocation is based on a federal exclusion or debarment, felony conviction, license revocation or suspension, or non-operational status. Due to possible delays in the updating of databases with criminal conviction and licensure information, the revocation effective dates for these actions can be months prior to the date the contractor mails the revocation letter, and it is from these retroactive effective dates that the re-enrollment bar runs. This can eliminate several months from the re-enrollment bar period; for instance, rather than a full 3-year re-enrollment bar for a felony conviction, the re-enrollment bar might only be 2 years and 10 months—or even less. By starting the re-enrollment bar period after the revocation letter is sent, the full period can be imposed; we do not believe that a revoked provider or supplier should be benefited by a shorter reenrollment bar simply because of a gap between the effective date of the revocation and the date on which the revocation letter is mailed. As an illustration, suppose an enrolled nonphysician practitioner was convicted of a felony on January 15, 2014. On February 15, the contractor mailed notice to the practitioner that his Medicare billing privileges were revoked effective January 15, 2014. Under the current version of § 424.535(c), the re-enrollment bar would run until January 15, 2017, or 2 years and 11 months after the date the revocation notice was sent. However, under our proposed revision, the reenrollment bar would run until February 15, 2017, or 3 years after the revocation notice was mailed.

Given this, we would revise the first sentence of § 424.535(c) to state that the re-enrollment bar is effective 30 days after CMS or its contractor mails notice of its revocation determination to the provider or supplier until the end of the re-enrollment bar.

8. Corrective Action Plans

Consistent with § 405.809, a provider or supplier whose Medicare billing privileges are revoked may submit a corrective action plan (CAP). The CAP must provide evidence that the provider or supplier is in compliance with Medicare requirements. If CMS or the Medicare contractor determines that the provider or supplier is, in fact, in compliance with Medicare requirements, the provider or supplier's billing privileges can be reinstated.

We propose to revise § 405.809 to state in new paragraph (a)(1) that a provider or supplier may not submit a CAP unless the revocation was based on § 424.535(a)(1), which states in part that a provider or supplier's billing privileges may be revoked if the provider or supplier is determined not to be in compliance with our enrollment requirements. Generally, we do not believe that providers and suppliers should be exonerated from failing to fully comply with Medicare enrollment requirements simply by furnishing a CAP. It is the duty of providers and suppliers to always maintain such compliance. However, we do believe that a CAP may be appropriate for revocations based on § 424.535(a)(1). We have seen numerous instances where a provider or supplier revoked under § 424.535(a)(1) had only minimally failed to comply with our enrollment requirements. To revoke its billing privileges when the problem can be quickly and easily corrected via a CAP could in some instances lead to unfair results.

With other revocation reasons, though, we believe that a CAP either should not be available or would be impractical. For instance, if a provider is revoked based on an OIG exclusion or felony conviction, no amount of corrective action would be able to change this. If a supplier is revoked under § 424.535(a)(4) for furnishing false or misleading information or under § 424.535(a)(9) for failing to report a change in practice location, the provider should not be able escape revocation merely by furnishing the truthful or updated information through a CAP, as it was the provider's responsibility to provide this information earlier.

We note that in cases where § 424.535(a)(1) is one of several reasons for a particular revocation, the provider would be able to submit a CAP with respect to the § 424.535(a)(1) revocation reason. For the other revocation bases, however, the provider would not be able to use the CAP process; the provider would instead have to utilize the appeals process under Part 498.

We further propose in new paragraph (a)(2) that providers and suppliers have only one opportunity to correct all of the deficiencies that served as the basis of the revocation through a CAP. We do not believe that providers should be given multiple opportunities to become compliant when it is crucial that such compliance always be maintained.

Notwithstanding these proposed changes, we note that providers and suppliers may still avail themselves of the appeals process under Part 498. Nothing in this proposed rule alters the provider or supplier's rights in this regard.

We also propose to delete the last sentence in § 424.535(a)(1), which reads: ''All providers and suppliers are granted an opportunity to correct the deficient compliance requirement before a final determination to revoke billing privileges, except for those imposed under paragraphs (a)(2), (a)(3), or (a)(5) of this section.'' This sentence is inconsistent with our proposed change in § 405.809(a)(1).

Finally, we propose to incorporate the existing language in § 405.809 into a new subparagraph (b).

Given this, we would make the following regulatory changes:

- Add a new paragraph to § 405.809(a)(1) stating the following:

++ The provider or supplier may not submit a CAP unless the revocation was for noncompliance under § 424.535(a)(1).

- Add a new paragraph (2) to § 405.809(a) stating the following: Subject to paragraph (a)(1), providers and suppliers have only one opportunity to correct all deficiencies that served as the basis of the revocation through a CAP.
- Add a new subsection (b) to § 405.809 that includes the existing language in § 405.809.
- Delete the last sentence in § 424.535(a)(1), which reads: ''All providers and suppliers are granted an opportunity to correct the deficient compliance requirement before a final determination to revoke billing privileges, except for those imposed under paragraphs (a)(2), (a)(3), or (a)(5) of this section.''

9. Revisions to § 424.530(a)(5) and § 424.535(a)(5)

We also propose to revise § 424.530(a)(5) and § 424.535(a)(5). We believe that the language in each of these subsections is redundant. To illustrate, the first sentence of § 424.530(a)(5) states that a provider or supplier's Medicare enrollment may be denied if, upon on-site review or other reliable evidence, CMS determines that the provider or supplier is not operational or is not meeting Medicare enrollment requirements. Later, paragraphs § 424.530(a)(5)(i) and (a)(5)(ii) essentially—and, in our view, needlessly—repeat this language. The same repetition is evident in § 424.535(a)(5), wherein paragraphs (a)(5)(i) and (a)(5)(ii) effectively duplicate the language in the first sentence of § 424.535(a)(5).

Therefore, § 424.530(a)(5) would be revised to state that the provider or supplier's enrollment can be denied if ''(u)pon on-site review or other reliable evidence, CMS determines that the provider or supplier is either of the following: (i) not operational to furnish Medicare covered items or services, or (ii) otherwise fails to satisfy any Medicare enrollment requirements.'' Likewise, § 424.535(a)(5) would be revised to state that a provider or supplier's Medicare billing privileges would be revoked if ''(u)pon on-site review or other reliable evidence, CMS determines that the provider or supplier is either of the following: (i) no longer operational to furnish Medicare covered items or services, or (ii) otherwise fails to satisfy any Medicare enrollment requirements.''

We note that our proposed revision to § 424.535(a)(5) would also add the phrase ''or other reliable evidence'' to this subsection. There are two reasons for this change. First, § 424.530(a)(5) currently contains the ''or other reliable evidence'' standard. We believe that these two paragraphs, § 424.530(a)(5) and § 424.535(a)(5), should contain consistent standards. Second, we believe it is important to be able to ascertain and take action under § 424.535(a)(5) against a non-operational or non-compliant provider or supplier through means other than a site review.

10. Technical Changes

We further propose certain technical changes related to the provider and supplier enrollment regulations.

In § 424.530(a)(1), we propose to change the word ''section'' to ''subpart P'' in the first sentence so that the sentence would read—''[t]he provider or supplier is determined not to be in compliance with the enrollment requirements described in this subpart P, or in the enrollment application applicable for its provider or supplier type, and has not submitted a plan of corrective action as outlined in part 488 of this chapter.'' The purpose of this change is to clarify that the provider or supplier must comply with all of the provider enrollment provisions in 42 CFR subpart P, not merely those in § 424.530.

For the same reason, we propose to revise § 424.535(a)(1) to state as follows: ''The provider or supplier is determined not to be in compliance with the enrollment requirements described in this subpart P, or in the enrollment application applicable for its provider or supplier type and has not submitted a plan of corrective action as outlined in part 488 of this chapter.''

Also, in § 424.535(a)(3)(ii), we propose to change the term ''denials'' to ''revocations'', as § 424.535 does not address denials.

Lastly, § 498.5(l)(4) states that for appeals of denials based on § 424.530(a)(9) related to temporary moratoria, the scope of the review is limited to whether the temporary moratorium applies to the provider or supplier. However, § 424.530(a)(10), rather than § 424.530(a)(9), applies to temporary moratoria. We therefore propose to correct § 498.5(l)(4) by changing the reference to § 424.530(a)(9) therein to § 424.530(a)(10).

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

A. ICRs Regarding Rewards for Information Relating to Medicare Fraud and Abuse (§ 420.405)

Attestation

Our proposed revisions to the IRP at § 420.405(f)(3) would require the reporting individual complete and submit an attestation, which would result in an increase in ICR burden. Between the years of 2000 and 2012, 18 rewards were paid by us under the IRP. Although we believe that the number of paid rewards would rise because of the increased monetary incentive, it is very difficult to estimate this figure. Yet we note that since the 2006 reward amount changes to the IRS program, the IRS has paid an average of 149 rewards per year, from a low of 97 to a high of 227. While there are limitations with using this data to estimate that similar ranges of rewards would be paid under the proposed IRP changes, we believe it indicates that the number of rewards made under IRP would very likely increase from an average of 1.5 a year. For purposes of this ICR section only, we will therefore propose to use the average of 149 attestations in our ICR calculations.

Persons likely to submit an attestation would include beneficiaries, medical providers, and health care administrative personnel that have been notified that they are eligible for a reward under the IRP. We believe that most individuals would prepare the attestation themselves. It is possible, however, that in light of the legal nature of the attestation, some may elect to have legal counsel draft the document. For purposes of estimating the potential cost of this activity only and so as not to underestimate the possible burden, we will utilize the hourly wage for lawyers in our cost calculations.

According to the most recent wage data provided by the Bureau of Labor Statistics for May 2012, the mean hourly wage for the category of ''lawyers'' is $62.93 (see *http://www.bls.gov/oes/current/oes231011.htm*). With fringe benefits and overhead, the per hour rate would be $95. We further project that the attestation preparation and submission process would take the attesting individual approximately 5 hours to complete. Applying our figure of 149 attestations, this results in an average annual burden of 745 hours at a cost of $70,775 (or $95 × 5 hours × 149).

We are soliciting comments on (1) our estimate of the number of attestations per year, (2) our estimate of 5 hours for an individual to complete and submit the attestation; and (3) the per hour rate of $95.

B. ICRs Regarding Our Proposed Provider Enrollment Provisions (§ 424.530 and § 424.535)

1. Definition of Enrollment

Our proposed revisions to § 424.502 and § 424.505 reflect the existing usage of the CMS–855O (OMB Approval #number 0938–0685) and, as such, would not impose any additional ICR burden. Consistent with § 424.507, an individual who wishes to enroll in Medicare for the sole purpose of ordering or certifying items or services for Medicare beneficiaries can become eligible to do so by completing the CMS–855O. Use of the CMS–855O commenced in July 2011, and the ICR burden associated with its use was approved by OMB at that time.

2. Debts to Medicare

Our proposed revisions to § 424.530 would likely result in an increase in application denials. While these revisions would not directly impose an information collection burden, the increase in denials could lead to more appeals from denied providers and suppliers. However, we are unable to estimate the number of potential denials because we do not have data available that can support such an estimate. Therefore, we cannot project the potential ICR burden that could arise from an increased number of: (1) Appeals of denials, or (2) resubmitted enrollment applications from the denied providers and suppliers.

3. Felony Convictions

Our proposed revisions to § 424.530(a)(3) and § 424.535(a)(3), while not paperwork burdens directly imposed by the rule, would likely result in an increase in application denials and revocations, respectively. We believe this would stem mostly from the expansion of these two paragraphs to include managing employees. We believe the changes involving the elimination of the detailed list of felonies would not result in a significant increase in denials or revocations because the ''detrimental to the best interests of Medicare'' standard is currently in these two provisions. However, we cannot estimate the potential increase in denials and revocations based on these proposed changes, as we do not have data available that can support such an estimate. Therefore, we cannot project the potential ICR burden that could arise from an increased number of appeals of denials and revocations.

4. Abuse of Billing Privileges

Our proposed addition of § 424.535(a)(8)(ii) would likely result in an increase in the ICR burden because there would likely be a concomitant increase in revocations and associated appeals. However, we are unable to estimate the number of potential revocations. We do not have data available that can support such an estimate as each situation would have to be very carefully reviewed and addressed on a case-by-case basis.

5. Post-Revocation Submission of Claims

Our proposed change to § 424.535(h) would likely not result in a change in the ICR burden. While the claims in question would need to be submitted within a shorter timeframe (60 days), they would likely be submitted regardless of the applicable submission period. The shorter timeframe would, in general, neither increase nor decrease the number of claims submitted.

6. Effective Date of Billing Privileges

Our proposed change to § 424.520(d) would likely result in a decrease in the ICR burden because fewer claims would be eligible for submission under this change. However, we are unable to project the decrease in the number of claims because we do not have data available to support such an estimate.

7. Effective Date of Re-Enrollment Bar

Our proposed change to § 424.535(c) would neither increase nor decrease the ICR burden. With or without this revision, the provider would still need to submit a CMS–855 application after the expiration of the re-enrollment bar in order to enroll again in Medicare.

8. Corrective Action Plans

Our proposed change to § 405.809 would result in a decrease in the ICR burden because there would be a reduction in the number of CAPs submitted. However, we are unable to estimate the decrease in the number of CAPs submitted because we do not have sufficient data to support such an estimate.

9. Revisions to § 424.530(a)(5) and § 424.530(a)(5)

Our proposed changes to § 424.530(a)(5) and § 424.535(a)(5) would not result in a change to the ICR burden because we do not believe there would be any change in the number of denials or revocations. We note that § 424.530(a)(5) already permits revocation based upon a site review ''or other reliable evidence.'' Thus, there would be no change in the number of (1) appeals of denials, or (2) resubmitted enrollment applications from denied providers and suppliers. As for § 424.535(a)(5), it is true that the ''or other reliable evidence'' standard is not in the current version of that paragraph. But we note that § 424.535(a)(1) permits revocation if the provider or supplier is determined not to be in compliance with the enrollment requirements in this section, or in the enrollment application that is applicable to its provider or supplier type. The authority to revoke based on reliable evidence of non-compliance, therefore, is largely similar to the reasons for revocation stated in § 424.535(a)(1). Hence, we do not believe there would be any change in the number of: (1) Appeals of revocations, or (2) resubmitted enrollment applications from revoked providers and suppliers.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS–6045–P], Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov*.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Statement of Need

This proposed rule is necessary to: (1) Increase the incentive for individuals to report information on individuals and entities that have or are engaged in sanctionable conduct; and (2) make important revisions to certain Medicare provider enrollment requirements to help ensure that fraudulent actors neither enroll in nor maintain their enrollment in the Medicare program.

B. Background

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4) and Executive Order 13132 on Federalism (August 4, 1999).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

As we explain in more detail later in this section, we encountered several uncertainties in estimating the economic impact of many of our proposed provisions. We could not estimate the number of denials and revocations that might stem from the proposed enrollment changes. We were also unable to estimate the potential monetary savings to the federal government or the costs to providers and suppliers resulting from the remaining proposed revisions. However, we estimate that our proposed changes to § 424.520(d) and § 420.405(e) would result in an annual transfer of more than $100 million from providers and suppliers to the federal government. Therefore, we have prepared an RIA because this is a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organization, and small governmental jurisdictions. Most entities and most other providers and suppliers are small entities, either by nonprofit status or by having revenues between $7 million and $34.5 million in any 1 year. Individuals and states are not included in the definition of a small entity.

Several provisions could have at least some effect on certain small entities. These include: (1) The proposed change at § 424.520(d) to the effective date of billing privileges for ambulance suppliers; (2) the proposed change at § 424.530(a)(6) to Medicare debt; (3) the proposed revision at § 424.535(a)(8) to the abuse of billing privileges; (4) the proposed change at § 424.535(h) to the submission of claims after revocation; and (5) the proposed revision at § 405.809 to the reinstatement of provider or supplier billing privileges following corrective action. However, as explained below we do not believe that this proposed rule would have a significant economic impact on a substantial number of small entities.

Our proposal at § 424.520(d) which would change the effective date of billing privileges for ambulance suppliers would only impact newly-enrolling ambulance suppliers. Each year, new ambulance providers constitute only a very small addition to the overall universe of the roughly 1.4

million Medicare-enrolled providers and suppliers an average of 1,127 ambulance suppliers enrolled in Medicare each year between 2006 and 2011. We further note that this provision would not in any way affect their ability to bill for services furnished after the later of the two events specified in § 424.520(d)(1) and (2).

Denials and revocations under, respectively, § 424.530(a)(6) and § 424.535(a)(8), would not occur prior to an extremely careful examination by CMS of: (1) The level of undue risk that the unpaid debt poses; or (2) the criteria for determining whether the provider or supplier has a pattern or practice of submitting non-compliant claims. As such, while we do anticipate an increase in some denials and revocations under these two provisions, we do not believe they would impact a substantial number of small entities.

Our proposed change to § 424.535(h) would not have a significant impact on small businesses because: (1) Only a small number of Medicare providers and suppliers have their billing privileges revoked, and (2) the revoked provider's claims would likely be submitted regardless of the shorter submission period.

Our proposed change to § 405.809 would impact some small entities' ability to submit CAPs in response to a revocation. However, these small entities would still able to file a request for reconsideration. Consequently, the overall effect of this proposed change would not impact a substantial number of small entities.

In short, we believe that the vast majority of providers and suppliers—both small and large—do not commit fraud, have not been convicted of a felony, and are otherwise compliant with Medicare enrollment requirements. Consequently, they would not be affected by most of the provisions in this proposed rule.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital that is located outside of a Metropolitan Statistical Area for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined and the Secretary certified that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2013, this is approximately $141 million. We believe that this proposed rule would have no consequential effect on state, local or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirements or costs on state and local governments, preempts state law, or otherwise has federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

C. Anticipated Effects

1. Incentive Reward Program

Our proposed change at § 420.405(e)(5) would likely result in an increase in savings to the federal government. As stated earlier in the ICR section of this proposed rule, the IRS paid an average of 149 rewards per year following the 2006 reward structure changes to its program. We proposed to estimate that CMS may make a similar number of rewards as the IRS under our proposed reward structure. We are soliciting comments on using the IRS' experience of paying an average of 149 rewards since 2006 to estimate the potential increase in amounts collected and associated rewards. However, as the IRS experience demonstrates, the amount of collections and the number of rewards paid can vary significantly each year. There are limitations with using this estimated based on IRS experience, however we believe that creating an incentive program similar to the IRS' long-standing reward program could reasonably result in a similar number of rewards made under such a program.

In the past decade, we have had an average collection of $193,069 as a result of information provided by individuals who qualified for a reward under the IRP. We anticipate that the amount of the collections may increase under the proposed modifications; but we do not have any internal data on which to base an estimate. We propose to project the impact of the IRP changes on amounts collected by multiplying the proposed estimated increase in the number of rewards requiring attestations —149—by the average amount collected by CMS of $193,069. We solicit comments on this proposed estimate of $28,767,281 (149 × $193,069) of future amounts collected. We also solicit comment on using a range of estimates for the increase in the number of rewards, and also solicit comment on using the increase in amounts collected experienced by the IRS to estimate the potential future increases in collections to us. We also propose to estimate the impact of the IRP changes on reward payments by multiplying the proposed estimate of amounts collected, $28,767,281, by the proposed reward structure, 15 percent. We solicit comments on this proposed estimate of $4,315,092 in future reward payments ($28,767,281 × .15)—which would result in a net amount collected of $24,452,189 by us. We also solicit comments on: (1) using a range of estimates for the increase in the amount reward payments; and (2) the increase in amounts collected experienced by the IRS to estimate the potential future increases in reward payments made by CMS. While there may be an increase in costs to the federal government to administer the program due to the proposed changes, we do not have sufficient data to estimate the magnitude of such an increase at this time and believe that any increased costs would be offset by an accompanying increase in returns to the federal government.

2. Provider Enrollment Provisions

We indicated in the ICR section that there could be an ICR burden associated with several of our provider enrollment provisions but that said burden could not be estimated. The following subsections discuss other potential costs—as well as savings—associated with our proposed enrollment changes.

a. Definition of Enrollment

As stated earlier, use of the CMS–855O commenced in July 2011. Our proposed revisions to § 424.502 or § 424.505 are merely intended to reflect the usage of the CMS–855O and, as such, would not result in any additional costs or savings.

b. Debts to Medicare

Our proposed revisions to § 424.530(a)(6) would likely result in additional application denials. However, we are unable to estimate the number of potential denials because we do not have data available that could support such an estimate. Therefore, we cannot project any costs in potential lost billings to providers and suppliers or any concomitant potential savings to the government. There may be an increase

in costs to the federal government towards identifying and making available to enrollment contractors information about individuals that were associated with a revoked entity with an unpaid Medicare debt, however, we are unable to estimate the magnitude of any potential increase at this time, and we also anticipate that an increase in costs would be offset by savings to the government by preventing billing by such providers or suppliers, or by the repayment of debt by such providers or suppliers.

c. Felony Convictions

As stated in the ICR section, our proposed revisions to § 424.530(a)(3) and § 424.535(a)(3) would likely result in additional application denials and revocations, respectively. Yet we cannot estimate the potential increase in denials and revocations and associated appeals based on these proposed changes, because we do not have data available that could support such an estimate. Thus, we cannot project the potential costs to providers and suppliers in lost potential billings or the potential costs or savings to the government arising from these proposed revisions.

d. Abuse of Billing Privileges

Our proposed addition of § 424.535(a)(8)(ii) would likely result in an increase in revocations. However, we are unable to project the number of providers and suppliers that might be revoked based on this proposed change because we do not have data available that could support such an estimate. Thus, we cannot project the potential costs to providers and suppliers in lost potential billings or the potential costs or savings to the government arising from these proposed revisions.

e. Post-Revocation Submission of Claims

Our proposed change to § 424.535(h) is unlikely to increase or decrease the number of claims submitted. While the revoked provider or supplier's claims would need to be submitted within a shorter timeframe, we believe that the vast majority of claims would still be submitted. Thus, we project negligible change in costs to providers and suppliers in their claim submissions.

f. Effective Date of Billing Privileges

Our proposed change to § 424.520(d) will likely result in a decrease in claims submitted to Medicare. Rather than being able to bill for Medicare services furnished up to 12 months prior to enrollment, newly enrolling ambulance suppliers would be unable to bill for services furnished prior to the later of: (1) The date of filing a Medicare enrollment application that was subsequently approved; or (2) the date the supplier first began furnishing services at a new practice location.

According to our statistics, and as stated earlier, an average of 1,127 ambulance suppliers enrolled in Medicare each year between 2006 and 2011. We will use this figure in our calculations. As a result of our proposed change, these suppliers could lose up to 10 months in potential Medicare billings for services furnished prior to the later of (1) or (2) in the previous paragraph.

Based on our data, the average ambulance supplier receives approximately $581,000 in Medicare payments per year, though this, of course, varies by individual supplier. Ten-twelfths of this amount (that is, 10 months divided by 12 months) is $484,167. Thus, we estimate that up to $545.7 million each year (or $484,167 × 1,127) in savings to the federal government could accrue as a result of this proposed change.

We emphasize that our $545.7 million estimate is a high-end estimate. There may be new ambulance suppliers that, absent our proposed change, would have met our requirements less than 10 months prior to enrollment. For instance, if the average newly enrolling ambulance supplier would have met our requirements 3 months prior to enrollment, the potential savings would be roughly $163.7 million (or $581,000 × 3/12 × 1,127). If the average figure is 6 months, our estimate would be approximately $327.4 million. We have no way of predicting the ratio of ambulance suppliers that would have met our requirements 10 months, 6 months or 3 months (or any other point, for that matter) prior to enrollment. Therefore, we will use these three timeframes as, respectively, high-end, primary, and low-end estimates in the Accounting Statement.

g. Effective Date of Re-Enrollment Bar

Our proposed revision to § 424.535(c) would result in a longer re-enrollment bar than currently exists in cases where the date of the offenses that is the basis of the revocation occurs months before the issuance of the revocation letter. The longer period during which a provider or supplier is unable to enroll in Medicare could result in lost billings to the provider or supplier. This could also result in a savings to the government because a provider or supplier that may have been billing Medicare would not be eligible to do so as soon as would otherwise be the case. However, we are unable to estimate the costs to providers and suppliers or the savings to the federal government because we do not have data available to support to support such an estimate. We also cannot estimate (1) how many providers and suppliers would be affected by this proposed change, or (2) the specific types of providers and suppliers that would be affected.

h. Corrective Action Plans

Our proposed change to § 405.809 would result in a reduction in the number of CAPs submitted, as noted in the ICR. This could result in lost billings to the provider or supplier in cases where a CAP resulted in a favorable decision more quickly than a reversal of the revocation at the appeals level, as the CAP review process often takes place sooner than the reconsideration process. The reduction in the submission of CAPs would also result in a savings to the federal government due to a decrease in the resources needed to review the CAPs. However, we cannot estimate the potential lost billings of providers or suppliers resulting from this proposed provision, or the savings to the federal government. We do not have data that can assist us in predicting: (1) the number of provider and suppliers that our proposed change would impact; or (2) the specific types of providers and suppliers that would be affected.

i. Revisions to § 424.530(a)(5) and § 424.530(a)(5)

We stated earlier, that we do not believe there would be any change in the total number of denials or revocations based on our proposed changes to § 424.530(a)(5) and § 424.530(a)(5). Therefore, we do not anticipate any resultant change in overall costs or savings.

j. Technical Changes

As these are simply technical revisions, there are no costs or savings associated therewith.

3. Conclusion

While we are unable to furnish detailed cost and savings estimates at this point regarding many of our proposed provisions, we are soliciting comments from the public regarding their views as to the potential burdens and costs of our proposals as well as the possible savings.

D. Accounting Statement and Table

As required by OMB Circular A–4 (available at link *http://www.whitehouse.gov/sites/default/files/omb/assets/regulatory_matters_pdf/a-*

4.pdf), we have prepared an accounting statement.

The ''transfer'' category in Table 2 reflects the application of a 7 percent and 3 percent annualized rate to:

- The high-end, primary, and low-end estimates referred to in section V.C.2.f. of this proposed rule and involving our proposed change to § 424.520(d).
- Our estimate of the net amount that could be recovered under our proposed IRP changes. Specifically, the annualized rates are applied to a figure of $24,452,189 or the difference between the previously estimated total recovery amount ($28,767,281) and the previously estimated total reward payments ($4,315,092). Note that we solicited comment on the advisability of establishing $72,675 estimate of the potential ICR burden of IRP attestation submissions.

The 7 and 3 percent figures were applied over a 10-year period beginning in 2013, with the figures in the accounting statement reflecting the average annualized costs over this period.

The accounting statement does not address the potential financial benefits of this proposed rule from the standpoint of its effectiveness in preventing or deterring certain providers and suppliers from enrolling in Medicare or maintaining their enrollment in Medicare. It is not possible for us to quantify these benefits in monetary terms. In addition, the statement does not include those provisions above that we believe would or could result in a cost or savings that nevertheless could not be estimated.

TABLE 2—ACCOUNTING STATEMENT AND TABLE

[In millions]

Category	Primary estimates	Low estimates	High estimates	Year dollars	Discount rate (percent)	Period covered
Transfers						
Resulting from the change in the effective date of billing privileges for ambulance suppliers	327.4	163.7	545.7	2013	7	2014–2023
	327.4	163.7	545.7	2013	3	2014–2023
From Whom to Whom	Transfers from Ambulance Suppliers to Federal Government					
Transfers						
Potential net recoveries under the IRP	24.5	N/A	N/A	2013	7	2014–2023
	24.5	N/A	N/A	2013	3	2014–2023
From Whom to Whom	Transfers from Providers and Suppliers to Federal Government					
Transfers						
Potential total reward payment	4.3	4.3	N/A	2013	7	2014–2023
	4.3	4.3	N/A	2013	3	2014–2023
From Whom to Whom	Transfers from Providers and Suppliers to Individuals that received an IRP reward					
Costs						
Submission of Attestations	*0.1	N/A	N/A	2013	7	2014–2023
	*0.1	N/A	N/A	2013	3	2014–2023
Who is Affected?	Individuals that received an IRP reward					

*Rounded to the nearest hundred-thousandth.

E. Alternatives Considered

1. Incentive Reward Program

We considered a potential reward structure of a different portion and for a different amount collected than that which we have proposed. First, we considered increasing the amount of the collection we would pay a reward for, but keeping the portion of the reward at 10 percent. We also considered mirroring the current IRS program of offering a range of 15 to 30 percent with no limit on the amounts collected we would pay a reward for. However, we have proposed ''15 percent of the final amount collections applied to first $66,000,000 for sanctionable conduct'' for two principal reasons. First, this reward structure is largely consistent with that used in the highly successful IRS reward program without creating the appearance of an overlap between CMS' IRP and the *qui tam provisions* of the False Claims Act. This is important because rewards are potentially available to individuals under both the CMS IRP and the False Claims Act but the requirements under each are distinct. Second, the proposed structure of a fixed percent that pays up to a certain dollar amount of collections is identical to the current IRP reward structure. We believe that this will make a new reward structure administratively easier to implement, as well as more transparent to individuals that may receive a reward under the IRP.

2. Provider Enrollment

As stated, our proposed provider enrollment provisions are needed to help ensure that fraudulent actors neither enroll in nor maintain their enrollment in the Medicare program. Nonetheless, we did consider four alternatives when preparing our enrollment provisions.

First, with respect to § 424.530(a)(6)(i) and (ii), we considered—and elected to propose—an exception to these denial

reasons for providers, suppliers, and owners thereof that have agreed to an extended repayment schedule. We believe that such an agreement indicates a willingness to satisfy the debt.

Second, we considered expanding the purview of proposed § 424.520(d) to include all certified providers and certified suppliers, such as hospitals, skilled nursing facilities, and ambulatory surgical centers. Yet as stated earlier in this proposed rule, we concluded that this approach would be unnecessary and even impractical. There is already an exhaustive and extensive review process involved with certified providers and certified suppliers, and there already are limitations posed by § 489.13 on the ability of such providers and suppliers to ''backbill'' for services.

Third, we contemplated eliminating CAPs altogether, as the existing appeals process already affords providers and suppliers adequate due process rights. In the interests of fairness and efficiency, however, we elected to retain the CAP process for revocations based on § 424.535(a)(1). We believe that our decision would continue to give certain providers and suppliers an additional opportunity to try to remedy inadvertent or minor errors without subjecting all parties to the lengthier appeals process. However, for reasons outlined in this proposed rule we believe that eliminating the CAP process for all other revocation reasons is warranted.

Finally, the possibility of expanding the purview of § 424.530(a)(3) and § 424.535(a)(3) to include not only managing employees but also corporate officers, corporate directors, and board members was considered. We determined that the better approach would be to simply solicit comment on the prospect of applying these sections to these individuals.

F. Impact on Beneficiary Access

We do not believe that our proposed provisions would impact beneficiary access. While it is possible that some providers and suppliers may have their Medicare enrollment applications denied or their Medicare billing privileges revoked as a result of our proposed enrollment provisions, we believe this number would be small.

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions. Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 420

Fraud, Health facilities, Health professions, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 498

Administrative practice and procedure, Health facilities, Health professions Medicare, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR Chapter IV as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

■ 2. Section 405.809 is revised to read as follows:

§ 405.809 Reinstatement of provider or supplier billing privileges following corrective action.

(a) *General rule.* A provider or supplier—

(1) May not submit a corrective action plan unless the revocation was for noncompliance under § 424.535(a)(1) of this chapter; and

(2) Subject to paragraph (a)(1) of this section, has only one opportunity to correct all deficiencies that served as the basis of its revocation through a corrective action plan.

(b) *Review of a corrective action plan.* Subject to paragraph (a)(1) of this section, CMS or its contractor reviews a submitted corrective action plan and does either of the following:

(1) Reinstates the provider or supplier's billing privileges if the provider or supplier provides sufficient evidence to CMS or its contractor that it has complied fully with the Medicare requirements, in which case—

(i) The effective date of the reinstatement is based on the date the provider or supplier is in compliance with all Medicare requirements; and

(ii) CMS or its contractor may pay for services furnished on or after the effective date of the reinstatement.

(2) Refuses to reinstate a provider or supplier's billing privileges. The refusal of CMS or its contractor to reinstate a provider or supplier's billing privileges based on a corrective action plan is not an initial determination under part 498 of this chapter.

PART 420—PROGRAM INTEGRITY: MEDICARE

■ 3. The authority for part 420 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 4. Section 420.405 is amended by—
■ A. Revising paragraph (a).
■ B. In paragraph (b)(2), removing the phrase ''or the OIG,'' and adding in its place the phrase ''the OIG,''.
■ C. Adding new paragraphs (b)(3) and (c)(2)(v).
■ D. Revising paragraph (d)(1).
■ E. Revising paragraphs (e)(2), (e)(3), and (f)(1).
■ F. Adding paragraph (f)(3).
■ G. Revising paragraph (h).

The revisions and additions read as follows:

§ 420.405 Rewards for information relating to Medicare fraud and abuse.

(a) *General rules.* (1) CMS pays a monetary reward for information that leads to the collection of at least $100 of Medicare funds from individuals and entities that are engaging in, or have engaged in, acts or omissions that constitute grounds for the imposition of a sanction under sections 1128, 1128A, or 1128B of the Act or that have otherwise engaged in sanctionable fraud and abuse against the Medicare program, otherwise referred to as ''sanctionable conduct.''

(2) The determination of whether an individual meets the criteria for a reward is at the exclusive discretion of CMS.

(3) When CMS applies the criteria specified in paragraphs (b), (c), and (e) of this section to determine the eligibility and the amount of the reward, it notifies the individual as specified in paragraph (d) of this section.

* * * * *

(b) * * *

(3) CMS does not give a reward if the same or substantially similar information was the basis for payment of a relator's share of the amounts collected under the False Claims Act, or if the same or substantially similar information is the subject of a pending False Claim Act case.

(c) * * *

(2) * * *

(v) An individual who is eligible for a reward for furnishing the same or substantially similar information to the Federal government under any other federal reward program or payment under Federal law is excluded from receiving a reward under this section.

(d) * * *

(1) *General rule.* After all Medicare funds have been collected and CMS has determined an individual eligible to receive a reward under the provisions of this section, CMS notifies the informant of his or her eligibility, in writing, at the most recent address supplied by the individual. It is the individual's responsibility to ensure that CMS has been notified of any change in his or her address or other relevant personal information (for example, change of name, phone number).

* * * * *

(e) * * *

(2) The amount of a reward represents what CMS considers to be adequate compensation in the particular case as follows:

(i) For information received before [the effective date of the final rule], 10 percent of the final amounts collected applied to the first $10,000 for the sanctionable conduct.

(ii) For information received on or after [the effective date of the final rule], 15 percent of the final amounts collected applied to the first $66,000,000 for the sanctionable conduct.

(3) CMS allocates the total reward amount to the first individual who provides CMS with specific information, as defined in paragraph (b) of this section, on a specific individual or entity that is engaging in, or has engaged in, acts or omissions that constitute grounds for the imposition of a sanction under sections 1128, 1128A or 1128B of the Act or that has otherwise engaged in sanctionable fraud and abuse against the Medicare program that leads to the imposition of a sanction.

* * * * *

(f) * * *

(1) An individual may submit information on persons or entities engaging in, or that have engaged in, fraud and abuse against the Medicare program to either of the following:

(i) The Office of Inspector General.

(ii) CMS or the CMS contractor that has jurisdiction over the suspected fraudulent provider or supplier.

* * * * *

(3) *Attestation requirements:* Upon notification of reward eligibility, an individual must complete an attestation that specifies that the individual has or will do all of the following:

(i) Is not participating and has not participated in the sanctionable conduct.

(ii) Is not otherwise ineligible to receive a reward under paragraph (c)(2) of this section.

(iii) Has furnished information that is accurate and truthful to the best of his or her knowledge.

(iv) Acknowledges that knowingly failing to provide truthful information could subject him or her to potential criminal and civil liability.

* * * * *

(h)(1) *Finding of ineligibility after reward is accepted.* If CMS finds an individual ineligible after payment of a reward, CMS reserves the right to recover such reward from the individual.

(2) *Notification of ineligibility.* CMS notifies an individual in writing upon the determination of ineligibility, and requests a full refund within 30 days.

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 5. The authority for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 6. Section 424.502 is amended in the definition of ''Enroll/Enrollment'' by revising the introductory text and paragraph (4) to read as follows:

§ 424.502 Definitions

* * * * *

Enroll/Enrollment means the process that Medicare uses to establish eligibility to submit claims for Medicare-covered items and services, and the process that Medicare uses to establish eligibility to order or certify Medicare-covered items and services. The process includes—

* * * * *

(4) Except for those suppliers that complete the CMS–855O form, CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order or certify Medicare covered items and services, granting the Medicare provider or supplier Medicare billing privileges.

* * * * *

§ 424.505 [Amended]

■ 7. Section 424.505 is amended by removing the phrase ''Once enrolled, the provider or supplier receives'' and adding in its place the phrase ''Except for those suppliers that complete the CMS–855O form or CMS-identified equivalent, successor form or process for the sole purpose of obtaining eligibility to order or certify Medicare covered items and services; once enrolled the provider or supplier receives,''.

■ 8. Section 424.520 is amended by revising paragraph (d) to read as follows:

§ 424.520 Effective date of Medicare billing privileges.

* * * * *

(d) *Physicians, nonphysician practitioners, physician and nonphysician practitioner organizations, and ambulance suppliers.* The effective date for billing privileges for physicians, nonphysician practitioners, physician and nonphysician practitioner organizations, and ambulance suppliers is the later of—

(1) The date of filing of a Medicare enrollment application that was subsequently approved by a Medicare contractor; or

(2) The date that the supplier first began furnishing services at a new practice location.

■ 9. Section 424.530 is amended by revising paragraphs (a)(1), (3), (5), and (6) to read as follows:

§ 424.530 Denial of enrollment in the Medicare program

(a) * * *

(1) *Noncompliance.* The provider or supplier is determined to not be in compliance with the enrollment requirements in this subpart P or in the enrollment application applicable for its provider or supplier type and has not submitted a plan of corrective action as outlined in part 488 of this chapter.

* * * * *

(3) *Felonies.* The provider, supplier or any owner or managing employee of the provider or supplier was, within the preceding 10 years, convicted (as that term is defined in 42 CFR 1001.2) of a Federal or State felony offense that CMS has determined to be detrimental to the best interests of the Medicare program and its beneficiaries.

* * * * *

(5) *On-site review.* Upon on-site review or other reliable evidence, CMS determines that the provider or supplier is either of the following:

(i) Not operational to furnish Medicare covered items or services.

(ii) Otherwise fails to satisfy any Medicare enrollment requirements.

(6) *Medicare debt.* (i) The enrolling provider, supplier, or owner (as defined in § 424.502), has an existing Medicare debt.

(ii) The enrolling provider, supplier, or owner (as defined in § 424.502)

thereof was previously the owner (as defined in § 424.502) of a provider or supplier that had a Medicare debt that existed when the latter's enrollment was voluntarily terminated, involuntarily terminated, or revoked and all of the following criteria are met:

(A) The owner left the provider or supplier that had the Medicare debt within 1 year of that provider or supplier's voluntary termination, involuntary termination or revocation.

(B) The Medicare debt has not been fully repaid.

(C) CMS determines that the uncollected debt poses an undue risk of fraud, waste or abuse.

(iii) A denial of Medicare enrollment under this paragraph (a)(6) can be avoided if the enrolling provider, supplier or owner thereof does both of the following:

(A) Satisfies the criteria set forth in § 401.607.

(B)(*1*) Agrees to a CMS-approved extended repayment schedule for the entire outstanding Medicare debt; or

(*2*) Repays the debt in full.

* * * * *

■ 10. Section 424.535 is amended by revising paragraphs (a)(1) introductory text and (a)(3), (a)(5), (a)(8), (c), and (h) to read as follows:

§ 424.535 Revocation of enrollment and billing privileges in the Medicare program.

* * * * *

(a) * * *

(1) *Noncompliance.* The provider or supplier is determined not to be in compliance with the enrollment requirements described in this subpart P, or in the enrollment application applicable for its provider or supplier type, and has not submitted a plan of corrective action as outlined in part 488 of this chapter. The provider or supplier may also be determined not to be in compliance if it has failed to pay any user fees as assessed under part 488 of this chapter.

* * * * *

(3) *Felonies.* (i) The provider, supplier, or any owner or managing employee of the provider or supplier was, within the preceding 10 years, convicted (as that term is defined in 42 CFR 1001.2) of a federal or state felony offense that CMS has determined to be detrimental to the best interests of the Medicare program and its beneficiaries.

(ii) Revocations based on felony convictions are for a period to be determined by the Secretary, but not less than 10 years from the date of conviction if the individual has been convicted on one previous occasion for one or more offenses.

* * * * *

(5) *On-site review.* Upon on-site review or other reliable evidence, CMS determines that the provider or supplier is either of the following:

(i) No longer operational to furnish Medicare covered items or services.

(ii) Otherwise fails to satisfy any Medicare enrollment requirements.

* * * * *

(8) *Abuse of billing privileges.* Abuse of billing privileges includes either of the following:

(i) The provider or supplier submits a claim or claims for services that could not have been furnished to a specific individual on the date of service. These instances include but are not limited to the following situations:

(A) Where the beneficiary is deceased.

(B) The directing physician or beneficiary is not in the state or country when services were furnished.

(C) When the equipment necessary for testing is not present where the testing is said to have occurred.

(ii) CMS determines that the provider or supplier has a pattern or practice of submitting claims for services that fail to meet Medicare requirements.

* * * * *

(c) *Reapplying after revocation.* If a provider, supplier, owner, or managing employee has their billing privileges revoked, they are barred from participating in the Medicare program from the date of the revocation until the end of the re-enrollment bar.

(1) The re-enrollment bar begins 30 days after CMS or its contractor mails notice of the revocation and lasts a minimum of 1 year, but not greater than 3 years, depending on the severity of the basis for revocation.

(2) The re-enrollment bar does not apply in the event a revocation of Medicare billing privileges is imposed under paragraph (a)(1) of this section based upon a provider or supplier's failure to respond timely to a revalidation request or other request for information.

* * * * *

(h) *Submission of claims for services furnished before revocation.* (1)(i) Except for HHAs as described in paragraph (h)(1)(ii) of this section, a revoked provider or supplier must, within 60 calendar days after the effective date of revocation, submit all claims for items and services furnished before the date of the revocation letter.

(ii) A revoked HHA must submit all claims for items and services within 60 days after the later of the following:

(A) The effective date of the revocation.

(B) The date that the HHA's last payable episode ends.

(2) Nothing in this paragraph (h) impacts the requirements of § 424.44 regarding the timely filing of claims.

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF ICFs/MR AND CERTAIN NFs IN THE MEDICAID PROGRAM

■ 10. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 498.5 [Amended]

■ 11. In § 498.5, paragraph (l)(4) is amended by removing the cross-reference ''§ 424.530(a)(9)'' and adding the cross-reference ''§ 424.530(a)(10)'' in its place.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 23, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: April 17, 2013.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–09991 Filed 4–24–13; 11:15 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R4–ES–2012–0068; FWS–R4–ES–2013–0010; 4500030114]

RIN 1018–AY19; 1018–AZ42

Endangered and Threatened Wildlife and Plants; Threatened Status for the Spring Pygmy Sunfish and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 2, 2012, proposed listing and designation of critical habitat for the spring pygmy sunfish (*Elassoma alabamae*) under the Endangered

Species Act of 1973, as amended (Act). In this document, we propose a slight reduction to the size of the proposed designation based on public input. We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for spring pygmy sunfish and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: *Written comments:* We will consider comments received or postmarked on or before May 29, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the revised proposed rule and the draft economic analysis on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2012–0068, or by mail from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* For comments on the proposed listing of this species, search for Docket No. FWS–R4–ES–2012–0068, which is the docket number for the listing portion of the proposed rulemaking. For comments on the proposed critical habitat designation for this species, search for Docket No. FWS–R4–ES–2013–0010, which is the docket number for the critical habitat portion of the proposed rulemaking.

(2) *By hard copy:* For comments on the proposed listing of this species, submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012–0068; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. For comments on the proposed critical habitat designation for this species (including the economic analysis), submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0010; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more details).

FOR FURTHER INFORMATION CONTACT: Stephen Ricks, Field Supervisor, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601–321–1122); or by facsimile (601–965–4340). If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and designation of critical habitat for the spring pygmy sunfish that was published in the **Federal Register** on October 2, 2012 (77 FR 60180), the revision to the proposed critical habitat boundaries of Unit 1 described in this document, our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties.

We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for the Spring pygmy sunfish. The final listing rule will publish under the existing docket number, FWS–R4–ES–2012–0068, and the final critical habitat designation will publish under new docket number FWS–R4–ES–2013–0010.

We will consider information and recommendations from all interested parties on both determinations. As to the proposed listing determination, we are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of this species, and ongoing conservation measures for these species and its habitat.

(4) Current or planned activities in the areas occupied by this species and possible impacts of these activities on this species.

As to the proposed critical habitat determination, we are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(6) Specific information on:

(a) The distribution of the spring pygmy sunfish;

(b) The amount and distribution of spring pygmy sunfish habitat;

(c) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why; and

(d) What areas not occupied at the time of listing are essential to the conservation of the species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(9) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(10) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (77 FR 60180) during the initial comment period from October 2, 2012, to

December 3, 2012, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0068 for the proposed listing, and at Docket No FWS–R4–ES–2013–0010 for the proposed critical habitat, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the spring pygmy sunfish in this document. For more information on previous Federal actions concerning the spring pygmy sunfish, or information regarding its biology, status, distribution, and habitat, refer to the proposed designation of critical habitat published in the **Federal Register** on October 2, 2012 (77 FR 60180), which is available online at *http://www.regulations.gov* (at Docket No. FWS–R4–ES–2012–0068) or from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On October 2, 2012, we published a 12-month finding and a proposed rule to list the spring pygmy sunfish as threatened with critical habitat (77 FR 60180). We proposed to designate approximately 8 stream miles (mi) (12.9 kilometers (km)) and 1,617 acres (ac) (654.4 hectares (ha)) of spring pool and spring-influenced wetland in Limestone County, Alabama, for designation as critical habitat. We will submit for publication in the **Federal Register** a final listing decision and critical habitat designation for the sunfish on or before October 2, 2013. In 2012, Belle Mina Farms, the owner of Beaverdam Spring, Moss Spring, and the upper reach of Beaverdam Creek, in Limestone County, Alabama, and the Service entered into a candidate conservation agreement with assurances (CCAA) for a population of spring pygmy sunfish. We are currently negotiating additional CCAAs with other landowners in the Beaverdam Spring system.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

New Information and Changes From the Previously Proposed Critical Habitat

The owner of property adjacent to the southwestern boundary of the proposed critical habitat contacted the Service by phone, and later through public comment, in regard to a boundary error in the proposed rule. In the proposed rule, we mistakenly included about 67.6 acres (27.3 ha) of his land as critical habitat, believing this land was part of Federal Government land within the Wheeler National Wildlife Refuge (Refuge). After being contacted by the landowner, we rechecked our records and verified land ownership with the Refuge. We have no records that this land was occupied historically by the species, and upon examination, we determined that it does not presently contain any of the primary constituent elements identified in the proposed rule. We therefore find that this land is not essential to the conservation of the spring pygmy sunfish. After this 67.6-acre reduction, the total proposed critical habitat acreage is reduced from 1,617 ac to 1,549.4 ac (627.02 ha). The revised map of proposed critical habitat for Unit 1 is provided below in the Proposed Regulation Promulgation section of this document.

We are also providing an updated index map of the critical habitat to reflect the changes to Unit 1 described above, and an updated map of Unit 2 that uses a revised map legend. We are not proposing any changes to the proposed boundaries of Unit 2 in this document. The revised index map and map of Unit 2 are also provided below in the Proposed Regulation Promulgation section of this document.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the spring pygmy sunfish, the benefits of critical habitat include public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for this species due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on

Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the spring pygmy sunfish. The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections that would be otherwise afforded to the spring pygmy sunfish (e.g., if we list the species as threatened and under other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methods employed, see Section 1.4, ''Framework for the Analysis'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the spring pygmy sunfish over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The DEA quantifies economic impacts of spring pygmy sunfish conservation efforts associated with the following categories of activity: (1) Residential, commercial and industrial development; (2) transportation and utilities; (3) groundwater and surface water extraction; (4) silviculture, agriculture, and grazing; and (5) dredging, channelization, and impoundment. Employing a 7 percent discount rate, the DEA estimates that the total incremental cost of the designation will be $150,000 over the next 20 years, or approximately $13,000 annually. The DEA states that in both units, the incremental impacts of the critical habitat designation would be limited to additional administrative costs to the Service, Federal agencies, and private third parties. Most of these impacts ($82,000) are associated with Unit 1 (Beaverdam Spring/Creek), with the remainder associated with Unit 2 (Pryor Spring/Branch). As Unit 1 is occupied by the sunfish, any conservation efforts the Service would recommend to avoid adverse modification of critical habitat would most likely be recommended to avoid jeopardy. Since Unit 2 is not occupied by the sunfish, impacts of any conservation efforts implemented for the benefit of the sunfish would be due solely to the designation of critical habitat. Transportation and utility activities are likely to be subject to the greatest incremental administrative impacts (forecast to be $85,000); followed by development ($49,000) and silviculture, agriculture, and grazing ($18,000) (all estimates expressed as present values over 20 years, assuming a 7 percent discount rate). No incremental impacts are anticipated for dredging, impoundment, and channelization, as these activities have not occurred within the study area for the past 10 years, and are not forecast to occur in the future. Please refer to the DEA for a more detailed discussion of study results.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations.

Required Determinations—Amended

In our October 2, 2012, proposed rule (77 FR 60180), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500

employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the spring pygmy sunfish would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as agricultural producers. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we finalize the proposed listing for this species, in areas where the spring pygmy sunfish is present, Federal agencies would be required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the spring pygmy sunfish. The only costs expected to be borne by third parties as a result of the proposed rule are portions of the total cost of each section 7 consultation action forecast for development activities. The DEA concludes that the proportion of small entities that may be affected is approximately 0.6 percent (one entity per year), and that the average cost incurred by each entity being affected is approximately 0.01 percent of estimated annual revenues. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have estimated that approximately one entity per year may be impacted by the proposed critical habitat designation, at a cost of an estimated $510 per entity. These cost estimates are based on administrative costs associated with the proposed designation. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Mississippi Ecological Services Field Office, Southeast Region, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, which was proposed to be amended at 77 FR 60180, October 2, 2012, as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.95(e), in the proposed entry for ''Spring Pygmy Sunfish (*Elassoma alabamae*),'' revise paragraphs (e)(5), (e)(6), and (e)(7)(ii) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

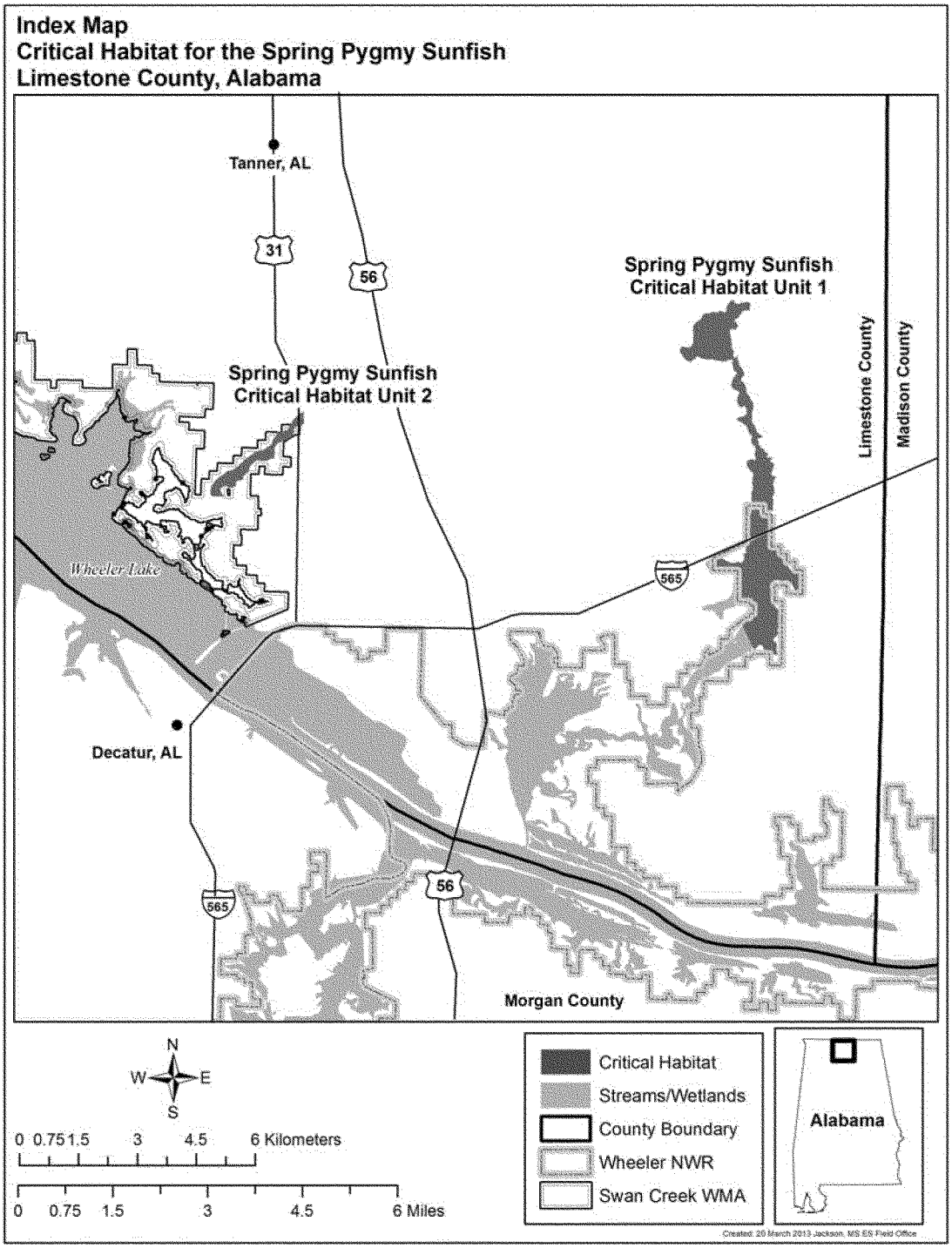
* * * * *

Spring Pygmy Sunfish *(Elassoma alabamae*)

* * * * *

(5) Index map of critical habitat for the spring pygmy sunfish follows:

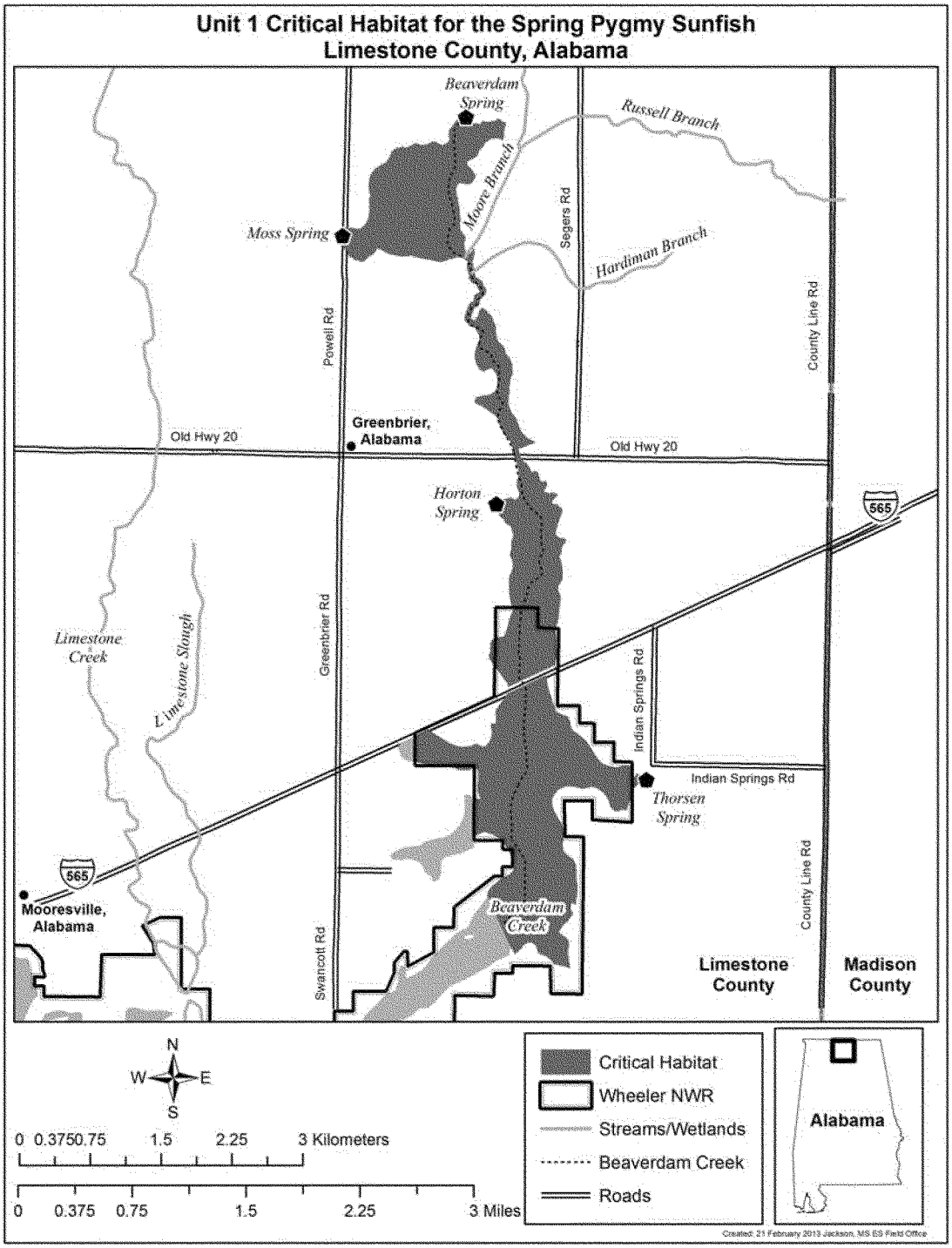
BILLING CODE 4310–55–P



(6) Unit 1: Beaverdam Spring/Creek, Limestone County, Alabama.

(i) *General Description:* Unit 1 includes a total of 9.5 km (5.9 mi) of Beaverdam Spring/Creek, northeast of Greenbrier, Alabama, from the spring head, 5.6 km (3.5 mi) north of Interstate 565 (Lat. 34.703162, Long. −86.82899) to 3.9 km (2.4 mi) south of Interstate 565 (Lat. 34.625896, Long. −86.82505). Unit 1 encompasses Moss, Horton, and Thorsen springs. This includes a total of 553.2 hectares (1,367 acres).

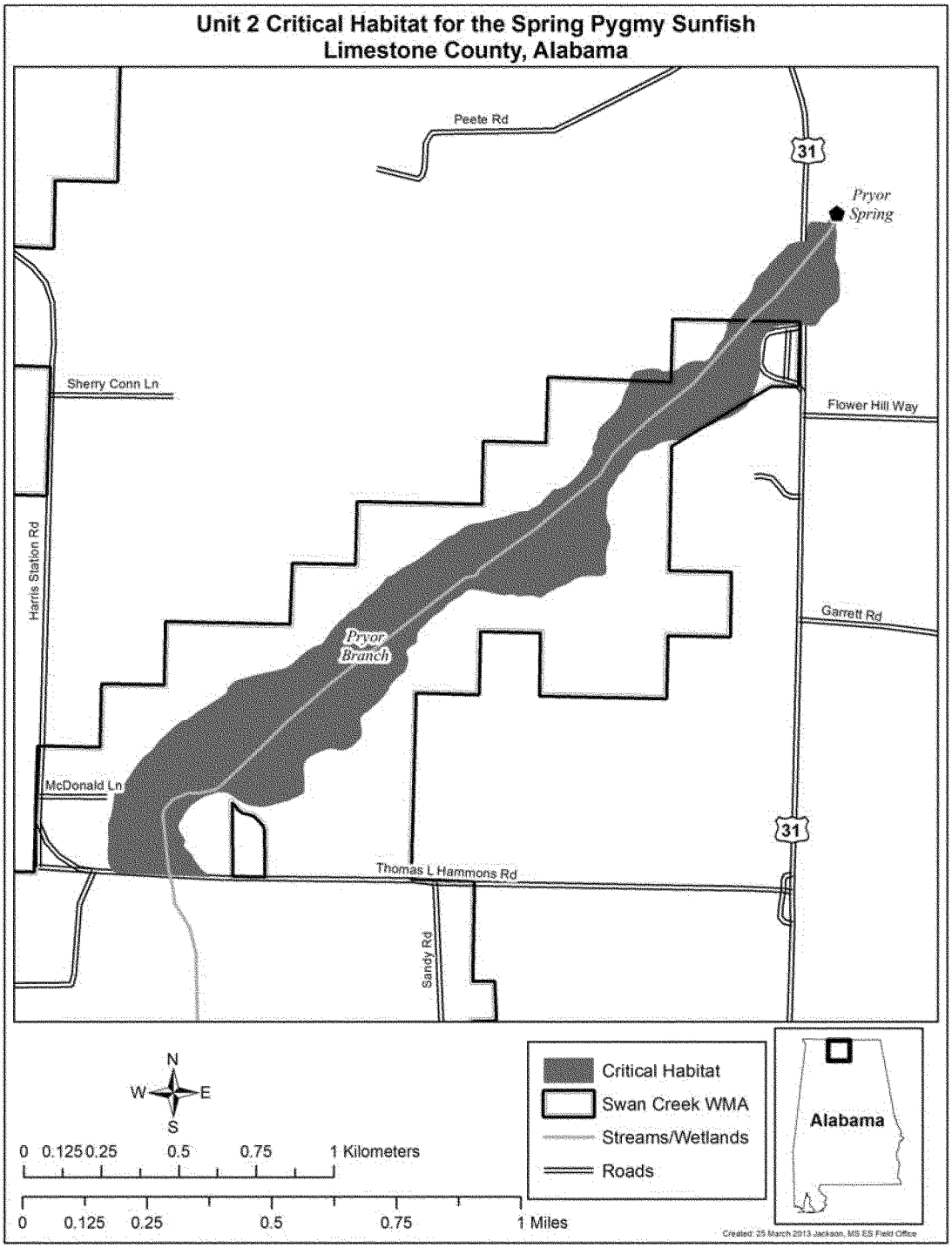
(ii) Map of Unit 1 follows:



(7) * * *

(i) * * *

(ii) Map of Unit 2 follows:


Unit 2 Critical Habitat for the Spring Pygmy Sunfish
Limestone County, Alabama
Peete Rd
31
Pryor Spring
Sherry Conn Ln
Flower Hill Way
Harris Station Rd
Garrett Rd
Pryor Branch
McDonald Ln
31
Thomas L Hammons Rd
Sandy Rd
N
W
E
S
0 0.125 0.25 0.5 0.75 1 Kilometers
0 0.125 0.25 0.5 0.75 1 Miles
Critical Habitat
Swan Creek WMA
Streams/Wetlands
Roads
Alabama
Created: 25 March 2013 Jackson, MS ES Field Office

* * * * *

Dated: April 12, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–09974 Filed 4–26–13; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket Nos. FWS–R4–ES–2012–0004; FWS–R4–ES–2013–0026; 4500030114]

RIN 1018–AY06; 1018–AZ48

Endangered and Threatened Wildlife and Plants; Endangered Status for the Fluted Kidneyshell and Slabside Pearlymussel and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our October 4, 2012, proposed listing and designation of critical habitat for the fluted kidneyshell (*Ptychobranchus subtentum*) and slabside pearlymussel (*Pleuronaia dolabelloides*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and amended required determinations section. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: *Written comments:* We will consider comments received or postmarked on or before May 29, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

Public informational session and public hearing: We will hold a public informational session and hearing on this proposed rule on May 14, 2013, from 6 to 9 p.m. (see **ADDRESSES**).

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and the draft economic analysis on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2012–0004 or FWS–R4–ES–2013–0026, or by mail from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: You may submit written comments by one of the following methods, or at the public hearing:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* For comments on the proposed listing of these species, search for Docket No. FWS–R4–ES–2012–0004, which is the docket number for the listing portion of the proposed rulemaking. For comments on the proposed critical habitat designation for these species, search for Docket No. FWS–R4–ES–2013–0026, which is the docket number for the critical habitat portion of the proposed rulemaking.

(2) *By hard copy:* For comments on the proposed listing of these species, submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2012–0004; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. For comments on the proposed critical habitat designation for these species (including the economic analysis), submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2013–0026; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more details).

Public informational session and public hearing: The public informational session and hearing will be held at Virginia Highlands Community College, Learning Resource Center, 110 Opportunity Lane, Abingdon, Virginia 24212–0828. People needing reasonable accommodations in order to attend and participate in the public hearing should contact Mary Jennings, Field Supervisor, Tennessee Ecological Services Field Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mary Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone 931–528–6481; facsimile 931–528–7075. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing and designation of critical habitat for the fluted kidneyshell and slabside pearlymussel that was published in the **Federal Register** on October 4, 2012 (77 FR 60803), our DEA, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties.

We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for the fluted kidneyshell and slabside pearlymussel. The final listing rule will publish under the existing docket number, FWS–R4–ES–2012–0004, and the final critical habitat designation will publish under new docket number FWS–R4–ES–2013–0026.

We will consider information and recommendations from all interested parties as to both determinations. As to the proposed listing determination, we are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species, and ongoing conservation measures for these species and its habitat.

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

As to the proposed critical habitat determination, we are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to these species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase

in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(6) Specific information on:

(a) The distribution of these two mussels;

(b) The amount and distribution of their habitat;

(c) What areas occupied by these species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why;

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(e) What areas not occupied at the time of listing are essential to the conservation of these species and why.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(9) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(10) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (77 FR 60803) during the initial comment period from October 4, 2012, to December 3, 2012, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R4–ES–2012–0004 for the proposed listing, and at Docket No. FWS–R4–ES–2013–0026 for the proposed critical habitat designation, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the fluted kidneyshell and slabside pearlymussel. For more information on the fluted kidneyshell or slabside pearlymussel, their habitat, or previous Federal actions, refer to the proposed listing and designation of critical habitat published in the **Federal Register** on October 4, 2012 (77 FR 60803), which is available online at *http://www.regulations.gov* (at Docket No. FWS–R4–ES–2012–0004) or from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On October 4, 2012, we published a proposed rule to list these two mussels as endangered and to designate critical habitat (77 FR 60803). We proposed to designate a total of approximately 2,218 river kilometers (1,380 river miles) of critical habitat in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. That proposal had a 60-day comment period, ending on December 3, 2012.

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of these two mussels, the benefits of critical habitat include public awareness of the presence of these species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for these species due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, our DEA concerning the proposed critical habitat designation is available for review and comment (see **ADDRESSES**).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for these two mussels. The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to these species (including listing under the Act, as well as other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for these species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, ''Methodology,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for these two species over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing.

The DEA quantifies economic impacts of the fluted kidneyshell and slabside pearlymussel conservation efforts associated with the following categories of activity: (1) Road maintenance and construction; (2) dam operation; (3) commercial, industrial, residential, and associated utility development; (4) agricultural and recreational development; (5) mining; (6) Federal management plan administration; (7) State water quality standards; and (8) restoration and conservation.

The present value of the total incremental cost of critical habitat designation is estimated at $3.5 million over 20 years assuming a 7 percent discount rate, or $175,000 on an annualized basis. Road maintenance and construction activities are likely to be subject to the greatest incremental impacts at $1.94 million over 20 years, followed by commercial, industrial, residential, and associated utility development at $1.1 million; restoration and conservation at $221,000; mining at $132,000; agricultural and recreational development at $75,900; Federal management plan administration at $24,200; dam operation at $21,500; and State water quality standards at $6,800. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations.

Required Determinations—Amended

In our October 4, 2012, proposed rule (77 FR 60803), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic

impact'' is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the fluted kidneyshell and slabside pearlymussel would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as commercial, industrial, residential, and associated utility development; agricultural and recreational development; mining; and restoration and conservation. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we finalize the proposed listing for these species, in areas where the fluted kidneyshell and slabside pearlymussel are present, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect these species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the fluted kidneyshell and slabside pearlymussel. In occupied critical habitat units, costs incurred are assumed to be limited to 15 percent of the project proponent's administrative cost of each projected section 7 consultation: $1,524 per formal consultation and $571 per informal consultation. These costs do not represent significant impacts on small entities. In three unoccupied critical habitat units (i.e., FK 3—Rockcastle River (Kentucky), FK 19—Holston River (Tennessee), and FK 20—French Broad River (Tennessee)) the DEA estimates impacts of $908,000 over 20 years at a 7 percent discount rate. This represents an annualized cost of $45,400 across all entities in those proposed unoccupied units with the majority of the incremental costs associated with project modifications for development projects. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 12, 2013.

Rachel Jacobson,

Principal Deputy, Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–09975 Filed 4–26–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 130321272–3272–01]

RIN 0648–XC589

Listing Endangered or Threatened Species: 90-Day Finding on a Petition To Include the Killer Whale Known as Lolita in the Endangered Species Act Listing of Southern Resident Killer Whales, Request for Information

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 90-day petition finding; request for information.

SUMMARY: We, the National Marine Fisheries Service (NMFS), announce a 90-day finding on a petition to include the *Orcinus orca* known as Lolita in the Endangered Species Act (ESA) listing of the Southern Resident killer whales. Lolita is a female killer whale, captured from the Southern Resident population in 1970, who resides at the Miami Seaquarium in Miami, Florida. The Southern Resident killer whale Distinct Population Segment (DPS) was listed as endangered under the ESA in 2005. We find that the petition, viewed in the context of information readily available in our files, presents substantial information indicating the petitioned action may be warranted. We are currently conducting a status review of Southern Resident killer whales. During this review, we will examine the application of the DPS policy and the listing with respect to Lolita. To ensure that the status review and our determination are comprehensive, we are soliciting scientific and commercial information pertaining to Lolita.

DATES: Scientific and commercial information pertinent to the petitioned action and DPS review must be received by June 28, 2013.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2013–0056, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=+NOAA-NMFS-2013-0056*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Protected Resources Division, NMFS, Northwest Region, Protected Resources Division, 7600 Sand Point Way NE. Attention—Donna Darm, Assistant Regional Administrator.
- *Fax:* (206) 526–6426; Attn: Donna Darm, Assistant Regional Administrator.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Lynne Barre, NMFS Northwest Region, (206) 526–4745; Marta Nammack, NMFS Office of Protected Resources, (301) 427–8469.

SUPPLEMENTARY INFORMATION:

ESA Statutory Provisions and Policy Considerations

On January 25, 2013, we received a petition submitted by the People for the Ethical Treatment of Animals Foundation on behalf of the Animal Legal Defense Fund, Orca Network, Howard Garrett, Shelby Proie, Karen Munro, and Patricia Sykes to include the killer whale (*Orcinus orca*) known as Lolita in the ESA listing of the Southern Resident killer whales. Lolita is a female killer whale captured from the Southern Resident population in 1970, who currently resides at the Miami Seaquarium in Miami, Florida. Copies of the petition are available upon request (see **ADDRESSES,** above).

In accordance with section 4(b)(3)(A) of the ESA, to the maximum extent practicable within 90 days of receipt of a petition to list or delist a species as threatened or endangered, the Secretary of Commerce is required to make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates that the petitioned action may be warranted, as is the case here, we are required to promptly commence a review of the status of the species concerned, during which we will conduct a comprehensive review of the best available scientific and commercial information. Within 12 months of receipt of a petition we are to conclude the review with a determination that the petitioned action is not warranted, or a proposed determination that the action is warranted. Under specific facts, we may also issue a determination that the action is warranted but precluded. Because the finding at the 12-month stage is based on a comprehensive review of all best available information, as compared to the more limited scope of review at the 90-day stage, which focuses on information set forth in the petition and information readily available in our files, this 90-day finding does not prejudge the outcome of the status review.

Under the ESA, the term ''species'' means a species, a subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532(16)). A joint NMFS–USFWS policy clarifies the Services' interpretation of the phrase ''Distinct Population Segment,'' or DPS (61 FR 4722; February 7, 1996). The DPS Policy requires the consideration of two elements when evaluating whether a vertebrate population segment qualifies as a DPS under the ESA: Discreteness of the population segment in relation to the remainder of the species, and, if discrete, the significance of the population segment to the species.

A species is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether a species is threatened or endangered based on any one or a combination of the following section 4(a)(1) factors: (1) The present or threatened destruction, modification, or curtailment of habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; and (5) any other natural or manmade factors affecting the species' existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA implementing regulations issued jointly by the Services (50 CFR 424.14(b)) define ''substantial information,'' in the context of reviewing a petition to list, delist, or reclassify a species, as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating whether substantial information is contained in a petition, the Secretary must consider whether the petition: (1) Clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (2) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (3) provides information regarding the status of the species over all or a significant portion of its range; and (4) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)).

Judicial decisions have clarified the appropriate scope and limitations of the Services' review of petitions at the 90-day finding stage, in making a determination that a petitioned action may be warranted. As a general matter, these decisions hold that a petition need not establish a ''strong likelihood'' or a ''high probability'' that a species is or is not either threatened or endangered to support a positive 90-day finding.

To make a 90-day finding on a petition to list, delist, or reclassify a species, we evaluate whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the

information presented if they appear to be based on accepted scientific principles (such as citing published and peer reviewed articles and studies done in accordance with valid methodologies), unless we have specific information in our files that indicates that the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be disregarded at the 90-day finding stage, so long as it is reliable and provides a basis for us to find that a reasonable person would conclude it supports the petitioners' assertions. In other words, conclusive information indicating that the species may meet the ESA's requirements for listing or delisting is not required to make a positive 90-day finding.

Background

After receiving a petition to list Southern Resident killer whales as threatened or endangered under the ESA in 2001 (CBD, 2001), we formed a Biological Review Team (BRT) to assist with a status review (NMFS, 2002). After conducting the status review, we determined that listing Southern Resident killer whales as a threatened or endangered species was not warranted because Southern Resident killer whales did not constitute a species as defined by the ESA (67 FR 44133; July 1, 2002). Because of the uncertainties regarding killer whale taxonomy (*i.e.,* whether killer whales globally should be considered as one species or as multiple species and/or subspecies), we announced we would reconsider the taxonomy of killer whales within 4 years. Following the determination, the Center for Biological Diversity and other plaintiffs challenged our ''not warranted'' finding under the ESA in U.S. District Court. The U.S. District Court for the Western District of Washington issued an order on December 17, 2003, which set aside our ''not warranted'' finding and remanded the matter to us for redetermination of whether the Southern Resident killer whales should be listed under the ESA (*Center for Biological Diversity* v. *Lohn,* 296 F. Supp. 2d. 1223 (W.D. Wash. 2003)). The court found that where there is ''compelling evidence that the global *Orcinus orca* taxon is inaccurate,'' the agency may not rely on ''a lack of consensus in the field of taxonomy regarding the precise, formal taxonomic redefinition of killer whales.'' As a result of the court's decision, we co-sponsored a Cetacean Taxonomy workshop in 2004 which included a special session on killer whales, and reconvened a BRT to prepare an updated status review document for Southern Resident killer whales (NMFS, 2004).

The BRT agreed that the Southern Resident killer whale population likely belongs to an unnamed subspecies of resident killer whales in the North Pacific, which includes the Southern and Northern Residents, as well as the resident killer whales of Southeast Alaska, Prince William Sound, Kodiak Island, the Bering Sea and Russia (but not transient or offshore killer whales). The BRT concluded that the Southern Resident killer whale population is discrete and significant with respect to the North Pacific resident taxon and therefore should be considered a DPS. In addition, the BRT conducted a population viability analysis which modeled the probability of species extinction under a range of assumptions. Based on the findings of the status review and an evaluation of the factors affecting the DPS, we published a proposed rule to list Southern Resident killer whales as threatened on December 22, 2004 (69 FR 76673). After considering public comments on the proposed rule and other available information, we reconsidered the status of the Southern Resident killer whale DPS and issued a final rule to list the Southern Resident killer whale DPS as endangered on November 18, 2005 (70 FR 69903). In the final rule we described the listed entity as: ''Killer whale (*Orcinus orca*), Southern Resident distinct population segment, which consists of whales from J, K and L pods, wherever they are found in the wild, and not including Southern Resident killer whales placed in captivity prior to listing or their captive born progeny.''

Following the listing, we designated critical habitat, completed a recovery plan, and conducted a 5-year review for Southern Resident killer whales. We issued a final rule designating critical habitat for the Southern Resident killer whales November 29, 2006 (71 FR 69055). The designation includes three specific areas: (1) The Summer Core Area in Haro Strait and waters around the San Juan Islands; (2) Puget Sound; and (3) the Strait of Juan de Fuca, which comprise approximately 2,560 square miles (6,630 square km) of Puget Sound. The designation excludes areas with water less than 20 feet (6.1 m) deep relative to extreme high water. After engaging stakeholders and providing multiple drafts for public comment, we announced the Final Recovery Plan for Southern Resident killer whales on January 24, 2008 (73 FR 4176). We have continued working with partners to implement actions in the recovery plan. In March 2011, we completed a 5-year review of the ESA status of Southern Resident killer whales concluding that no change was needed in their listing status, and that the Southern Resident killer whale DPS would remain listed as endangered (NMFS, 2011).

On August 2, 2012, we received a petition submitted by the Pacific Legal Foundation on behalf of the Center for Environmental Science Accuracy and Reliability, Empresas Del Bosque, and Coburn Ranch to delist the endangered Southern Resident killer whale DPS under the ESA. The petitioners contend that the killer whale DPS does not constitute a listable unit under the ESA because NMFS is without authority to list a DPS of a subspecies. The petitioners also contend that there is no scientific basis for the designation of the unnamed North Pacific Resident subspecies of which the Southern Resident killer whales are a purported DPS. The petition also presents new information regarding genetic samples and data analysis pertinent to the question of discreteness and the DPS determination. On November 27, 2012, we made a 90-day finding accepting the petition, based on the additional genetic samples and publication of new peer reviewed scientific journal articles regarding the taxonomy of killer whales, and requested information to inform a status review (77 FR 70733). That status review is currently underway.

Petition Finding

The petition addressed by this notice describes Lolita, a female killer whale captured from the Southern Resident population in 1970, who currently resides at the Miami Seaquarium in Miami, Florida, as the only remaining member of the Southern Residents alive in captivity. The petitioners present biological information about Lolita's genetic heritage and contend that Lolita is a member of the endangered Southern Resident DPS and should be included under the ESA listing. In addition, they provide a legal argument regarding the applicability of the ESA to captive members of endangered species. The petition also includes information about how each of the five section 4(a)(1) factors applies with respect to Lolita. Lastly, the petitioners contend that including Lolita in the ESA listing will contribute to conservation of the wild Southern Resident killer whale population.

As described above, the standard for determination of whether a petition includes substantial information is whether the amount of information

presented provides a basis for us to find that it would lead a reasonable person to believe that the measure proposed in the petition may be warranted. We find the biological information regarding Lolita's genetic heritage and consideration of captive individuals under the ESA meets this standard, based on the information presented and referenced in the petition, as well as all other information readily available in our files.

Information Solicited

We are soliciting information from the public, governmental agencies, tribes, the scientific community, industry, environmental entities, and any other interested parties concerning Lolita's genetic heritage and status. We will consider all of the available information in our determination of whether including Lolita in the Southern Resident killer whale ESA listing is warranted. If we propose to include Lolita in the DPS, we would seek public comment before making a final decision. We will coordinate our review of the petition to include Lolita in the Southern Resident DPS with our ongoing review of the concurrent petition to delist the DPS. If we propose to delist the Southern Resident DPS, we would seek public comment before making a final decision.

List of Subjects in 50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Reporting and recordkeeping requirements.

References Cited

The complete citations for the references used in this document can be obtained by contacting NMFS (See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**) or on our Web page at: *http://www.nwr.noaa.gov/protected_species/marine_mammals/cetaceans_whales_dolphins_porpoise/toothed_whales/killer_whales/esa_status_of_puget_sound_killer_whales.html*

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 24, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–10024 Filed 4–24–13; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004515–3385–01]

RIN 0648–BC63

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Amendment 28

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 28 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). If implemented, this rule would establish a process for determining whether the limited harvest and possession of red snapper in or from the South Atlantic exclusive economic zone (EEZ) could occur during a given fishing year and establish a process for setting commercial and recreational fishing seasons for red snapper beginning in 2013. Amendment 28 also specifies the process and formulas for setting commercial and recreational annual catch limits (ACLs) for red snapper if limited fishing seasons may occur. This rule would implement those ACLs and specify accountability measures (AMs) when the limited harvest and possession of red snapper is allowed. During limited fishing seasons, the rule would also eliminate the current red snapper minimum size limit, establish a recreational bag limit and establish a commercial trip limit for red snapper. In this rule, NMFS intends to continue the rebuilding of the red snapper stock and to provide socio-economic benefits to snapper-grouper fishermen and communities that utilize the red snapper resource.

DATES: Written comments must be received on or before May 29, 2013.

ADDRESSES: You may submit comments on the amendment identified by ''NOAA–NMFS–2013-0040'' by any of the following methods:

- *Electronic submissions:* Submit electronic comments via the Federal e-Rulemaking Portal: *http://www.regulations.gov.* Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0040,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Rick DeVictor, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Electronic copies of Amendment 28, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/pdfs/SGAmend28.pdf.*

FOR FURTHER INFORMATION CONTACT: Rick DeVictor, Southeast Regional Office, telephone: 727–824–5305, or email: *rick.devictor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes red snapper, is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Background

Red snapper are overfished and undergoing overfishing. The harvest and possession of red snapper have been prohibited since January 4, 2010, initially through temporary rules (74 FR 63673, December 4, 2009 and 75 FR 27658, May 18, 2010), and then through the final rule to implement Amendment 17A to the FMP (75 FR 76874, December 9, 2010). Amendment 17A continued the prohibitions on a permanent basis by implementing an ACL for red snapper of zero (landings only). Amendment 17A also implemented a rebuilding plan for red snapper, which

specifies that red snapper biomass must increase to the target rebuilt level in 35 years, starting from 2010. The final rule implementing Amendment 17A also included a large area closure for most snapper-grouper species, however, this area closure did not become effective because it was determined not to be necessary to end the overfishing of red snapper (76 FR 23728, April 28, 2011). At its June 2012 meeting, the Council received new information from NMFS regarding discard estimates for red snapper. Using these data, the Council and NMFS determined that a limited season for red snapper was possible in 2012. At the Council's request, NMFS implemented emergency rulemaking to allow for the limited harvest and possession of red snapper in or from the South Atlantic EEZ in 2012 (77 FR 51939, August 28, 2012).

Status of the Stock

The most recent Southeast Data, Assessment, and Review (SEDAR) benchmark stock assessment for red snapper, SEDAR 24, was completed in October 2010. Much like the stock assessment completed in 2008, this assessment showed red snapper to be overfished and undergoing overfishing, but also showed that red snapper were undergoing overfishing at a lower rate than found in the 2008 stock assessment. The next benchmark stock assessment for red snapper is scheduled for 2014.

Measures Contained in This Proposed Rule

This rule would implement several management measures to allow for the limited harvest and possession of red snapper in or from the South Atlantic EEZ. When the Council approved, and NMFS implemented, the temporary rule through emergency action in 2012, they determined that retention of a limited number of red snapper (13,097 fish) would not jeopardize the rebuilding of the red snapper stock because the estimated discard mortality level for 2012 was below the acceptable biological catch (ABC). In Amendment 28, the Council has developed a process to evaluate whether a similar limited harvest season could occur each year, beginning in 2013.

Process for Determining the Limited Annual Red Snapper Harvest

Amendment 28 describes the annual process developed by the Council for determining whether a limited fishing season for red snapper will occur and how much red snapper may be harvested. The ABC is determined through the Council's ABC control rule and the rebuilding projections from the most recent stock assessment. Estimated landings and dead discards of red snapper from the previous year should be available around March of each year, and NMFS would use that information in formulas approved by the Council in Amendment 28. If NMFS determines, using the formulas, that the estimated landings and dead discards that occurred in the previous year are equal to or greater than the ABC for the current year, no harvest would be allowed and the ACL would remain equal to zero. However, if NMFS determines, using the formulas, that the previous year's estimated landings and dead discards are less than the ABC, then the ACL would be set to the amount of harvest that may be allowed for the current year.

Setting the Commercial and Recreational Red Snapper Fishing Seasons

If NMFS determines limited commercial and recreational fishing seasons are allowed for that fishing year, NMFS would announce the commercial and recreational fishing season start dates in the **Federal Register** and by other methods, as deemed appropriate. The commercial fishing season would begin on or close to the second Monday in July, and the recreational fishing season, which would consist of weekends only (Fridays, Saturdays, and Sundays), would begin on or close to the second Friday of July. If the fishing seasons do not open exactly on these dates, they would open as close to these dates as possible. NMFS would not announce the season end date for the commercial sector before the season starts, but would monitor harvest and close the commercial sector when the commercial ACL has been reached or projected to be reached by filing an in-season closure notification with the Office of the Federal Register. After the commercial sector closes, sale and purchase of red snapper are prohibited and harvest and possession of red snapper are limited to the bag and possession limits. NMFS would project when the recreational ACL would be reached and announce the fishing season end date in the **Federal Register**. The recreational season length would be based on an evaluation of historical harvest levels and fishing effort.

If the NMFS Regional Administrator (RA) determines tropical storm or hurricane conditions exist, or are projected to exist, in the South Atlantic during the commercial or recreational fishing seasons, this rule would allow the RA to modify the opening and closing dates by filing a notification to that effect with the Office of the Federal Register, and announcing via NOAA Weather Radio and Fishery Bulletin any change in the red snapper commercial or recreational fishing seasons. Additionally, the Council decided that if the projected commercial or recreational fishing season is determined by NMFS to be 3 days or less, then the commercial or recreational fishing season would not open for that fishing year because that short time period would not provide sufficient fishing opportunity for the public.

ACLs

Amendment 28 includes formulas for determining the commercial and recreational ACLs on an annual basis. The formulas are based on total removals (landings plus discards) from prior fishing years. The formulas would provide the total ACL for limited fishing seasons. Using the current allocation ratio for red snapper (28.07 percent commercial and 71.93 percent recreational), NMFS would then determine the commercial and recreational ACLs. When finalized data from the prior fishing years are available and NMFS determines that limited fishing seasons are allowable, NMFS would publish a notification with the Office of the Federal Register to announce the commercial and recreational ACLs for limited fishing seasons for that fishing year.

AMs

During limited fishing seasons, the Council and NMFS would establish in-season AMs to prevent these ACLs from being exceeded. If red snapper harvest is allowed in a given fishing year, the commercial in-season AM requires that if commercial landings reach or are projected to reach the commercial ACL, then NMFS would close the commercial sector for red snapper for the remainder of the fishing year. After the commercial sector closes, sale and purchase of red snapper would be prohibited and harvest and possession of red snapper would be limited to the bag and possession limits until the recreational fishing season closes. The recreational in-season AM is the length of the recreational fishing season as determined by NMFS and announced in the **Federal Register**. After the recreational fishing season closes, the bag and possesion limits for red snapper would be zero. If both the commercial and recreational sectors are closed, it would be unlawful to harvest or possess red snapper.

Other Management Measures

In order to reduce the probability of an overage of the commercial and recreational ACLs during the limited open seasons, this rule would implement a 75-lb (34-kg) commercial trip limit and a 1-fish per person recreational bag limit. The rule would also remove the 20-inch (51-cm), total length (TL), minimum size limit for both the commercial and recreational sectors to decrease regulatory discards of red snapper (fish returned to the water because they are below the minimum size limit).

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this rule is consistent with Amendment 28, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows.

The purpose of the rule is to continue the rebuilding of the red snapper stock and to increase the social and economic benefits to fishermen and fishing communities that utilize the red snapper component of the snapper-grouper fishery while also minimizing safety at sea concerns, the probability of ACL overages, and discard mortality of red snapper. The Magnuson-Stevens Act serves as the legal basis for the rule.

This rule is expected to directly affect commercial fishing vessels that possess commercial snapper-grouper permits and for-hire vessels that possess for-hire snapper-grouper permits for the South Atlantic. The Small Business Administration has established size criteria for all major industry sectors in the U.S. including fish harvesters. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all its affiliated operations worldwide. For for-hire vessels, the other qualifiers apply and the receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

From 2003 through 2007, the average number of vessels with commercial South Atlantic snapper-grouper permits was 944, of which 749 were transferable and 195 were non-transferable. Transferable permits have no limit on landings per trip, except for species subject to trip limits, while non-transferable permits are restricted to 225 lb (102 kg) of landings per trip, unless the regulations specify a lower amount. For 2008 through 2010, the average number of vessels with commercial snapper-grouper permits decreased to 788, of which 643 were transferable permits and 145 non-transferable permits. As of July 9, 2012, the number of vessels with commercial snapper-grouper permits had decreased further to 694, of which 568 were transferable and 126 were non-transferable.

Prior to the closure, any commercial vessel with a commercial snapper-grouper permit could commercially harvest red snapper in the South Atlantic. Commercially harvested red snapper are landed mostly in Georgia and northeast Florida (landings from Georgia and Florida are combined for confidentiality considerations), followed by North Carolina and South Carolina, and are mainly caught with vertical lines. On average, 220 commercial vessels landed at least 1 lb (0.45 kg) of red snapper per year between 2003 and 2007. Of these 220 commercial vessels, 102 landed less than 100 lb (45 kg) of red snapper per year, 84 landed between 101 lb (46 kg) and 1,000 lb (455 kg), and only 34 landed more than 1,000 lb (455 kg). In addition, red snapper was not the primary revenue species on most commercial trips that harvested red snapper during those years. On average, red snapper was the primary source of trip revenue on only 163 commercial trips per year, or only 12 percent of the commercial trips on which it was landed. These trips accounted for approximately 31 percent of the total commercial red snapper landings.

From 2005 through 2009, the average number of vessels commercially harvesting at least 1 lb (0.45 kg) of red snapper per year increased to 230, and peaked at 270 vessels in 2009. The impending prohibition on the commercial harvest of red snapper in 2010, as well as the closure of vermilion snapper to commercial harvest in September 2009, most likely caused this increase in participation. Vermilion snapper is the primary target species on trips catching red snapper and a primary substitute species for red snapper in seafood markets.

From 2003 through 2007, commercial landings of red snapper averaged approximately 121,000 lb (55,000 kg) annually, which generated average annual gross revenue of $488,030 (2011 dollars). From 2005 through 2009, commercial landings of red snapper averaged approximately 171,000 lb (77,727 kg) while gross revenue averaged approximately $709,441 per year. Thus, during this time, the average price of commercially harvested red snapper was approximately $4.15 per pound. Further, average annual red snapper commercial landings and gross revenue were approximately 743 lb (337 kg) and $3,085 per vessel, respectively. Because the commercial harvest and sale of red snapper were prohibited in 2010 and 2011, landings and gross revenue data from these years are the most currently available for red snapper.

From 2003 through 2007, an average of 890 commercial vessels per year harvested snapper-grouper species. For 2008 through 2011, an average of 865 commercial vessels harvested snapper-grouper species per year. Average annual commercial landings of all snapper-grouper species in the South Atlantic from 2003 through 2007 were approximately 6.43 million lb (2.92 million kg) which generated approximately $14.98 million in gross revenue. For 2008 through 2011, these figures decreased to 5.03 million lb (2.29 million kg) and $13.66 million, respectively. From 2003 through 2007, total landings of all species by vessels harvesting snapper-grouper averaged approximately 11.24 million lb (5.11 million kg) which generated $24.74 million in gross revenue per year. For 2008 through 2011, average total landings of all species by vessels harvesting snapper-grouper increased slightly to 12.21 million lb (5.55 million kg) per year, while average annual gross revenue decreased slightly to $23.86 million. Thus, for 2008 through 2011, average annual gross revenue per vessel in the snapper-grouper fishery was approximately $27,584. Red snapper accounted for none of these vessels' gross revenue in 2010 and 2011 due to the prohibitions on commercial harvest and sale. In 2011, the maximum annual gross revenue for a commercial snapper-grouper vessel was $618,272.

From 2003 through 2008, the average number of snapper-grouper for-hire permits in the South Atlantic was 1,811. In 2009 and 2010, the average number of South Atlantic snapper-grouper for-hire permits per year increased to 1,953. However, as of July 9, 2012, the number of for-hire vessels with South Atlantic for-hire snapper-grouper permits was only 1,524. Florida is the homeport state

for most of these vessels. For-hire permits do not distinguish charter vessels from headboats and thus the specific number of charter vessels and headboats with for-hire snapper-grouper permits cannot be estimated. The number of for-hire vessels that landed snapper-grouper also cannot be estimated based on currently available data.

Prior to the closure, any for-hire vessel with a for-hire snapper-grouper permit could harvest red snapper recreationally in the South Atlantic. From 2003 through 2008, recreational red snapper harvest in the South Atlantic averaged approximately 403,000 lb (183,182 kg) annually. Charter vessels and headboats accounted for approximately 110,000 lb (50,000 kg) and 62,000 lb (28,182 kg) of this harvest, respectively. Although the harvest or possession of red snapper in the South Atlantic was prohibited in 2010 and 2011, some red snapper continued to be harvested by the recreational sector. From 2009 through 2011, recreational red snapper harvest averaged about 346,000 lb (157,273 kg), although most of this harvest was in 2009. Charter vessels and headboats accounted for approximately 75,000 lb (34,091 kg) and 51,000 lb (23,182 kg) of this harvest, respectively.

Recreational snapper-grouper harvest in the South Atlantic averaged approximately 10.8 million lb (4.91 million kg) per year from 2005 through 2009. Charter vessels and headboats accounted for approximately 1.6 million lb (727,273 kg) and 1.4 million lb (636,364 kg) of this harvest, respectively. In 2010 and 2011, recreational snapper-grouper harvest averaged approximately 11.8 million lb (5.36 million kg) annually, with charter vessels and headboats each accounting for 1.2 million lb (545,455 kg) of this harvest, respectively.

Red snapper target effort in the recreational sector averaged approximately 57,300 trips per year in the South Atlantic during 2005–2009. While a prohibition on the possession of recreationally harvested red snapper need not result in the cancellation of a target trip, the popularity of red snapper as a food fish that recreational anglers would prefer to retain rather than release suggests that target effort would be expected to decline in response to a prohibition. As expected, red snapper target effort significantly dropped to about 4,000 trips in 2010 and became practically non-existent in 2011.

For-hire vessels receive value from the services they provide. Producer surplus is the measure of the economic value these operations receive. Producer surplus is the difference between the gross revenue a business receives for a good or service, such as a charter vessel or headboat trip, and the cost the business incurs to provide that good or service. Estimates of the producer surplus associated with snapper-grouper or red snapper for-hire trips are not available. However, proxy values in the form of net operating revenue (NOR) are available. NOR for charter vessels is estimated to be $132 (2011 dollars) per charter trip. Since targeting of red snapper in the recreational sector was practically non-existent in 2011, NOR from trips targeting red snapper was likely zero in 2011 for charter vessels. In 2009, charter vessels in the South Atlantic had average gross revenues of approximately $109,700 (2011 dollars). No charter vessels earned more than $500,000 in gross revenues in 2009.

NOR per angler trip is lower for headboats than for charter vessels. NOR estimates for a representative headboat trip are $48 in the Gulf of Mexico, including all of Florida, and $63–$68 in North Carolina. For full-day and overnight headboat trips, NOR is estimated to be $74–$77 in North Carolina. These estimates are in 2009 dollars and comparable estimates are not available for Georgia and South Carolina. Based on this information, NOR per headboat angler trip is estimated to be approximately $70 in 2011 dollars. Since targeting of red snapper in the recreational sector was practically non-existent in 2011, NOR from trips targeting red snapper was likely zero in 2011 for headboats. Headboats in the South Atlantic had average gross revenues of approximately $194,570 (2011 dollars).

Based on the information above, all commercial fishing vessels and for-hire fishing vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities.

For the action to establish a process to determine future ACLs and season lengths, establish a commercial fishing season start date of the second Monday in July, establish a recreational fishing season start date of the second Friday in July, establish a 75-lb (34-kg) commercial trip limit, establish a recreational bag limit of 1 fish per person per day, and eliminate the minimum size limit for red snapper, the expected, direct economic effects cannot be estimated quantitatively. Because this action only establishes a process and formulas for estimating potential ACLs and the resulting season lengths in 2013 and future years, and the data to be used in those formulas are not yet available, quantitative estimates of ACLs and season lengths for the commercial and recreational sectors are not currently available for 2013 and future years. Because the ACLs and season lengths for the commercial and recreational sectors are currently unknown, quantitative estimates of potential changes in landings and gross revenue for the commercial sector as well target trips and NOR for the for-hire sector in 2013 and future years cannot be provided at this time.

However, this action generates a positive probability the ACL will be sufficiently large to allow for a commercial and recreational season. In turn, there is a positive probability that gross revenue from landings of red snapper in the commercial sector and, to a lesser extent, NOR in the for-hire sector from red snapper target trips would be greater than zero. Thus, the direct economic effects of this action are generally expected to be positive in the short-term. Long-term direct economic effects are also expected to be positive, as the probability of a fishing season would still be positive, but are dependent on information arising from future stock assessments and the effect of such information on estimates of ABC in future years.

If there is a commercial fishing season, gross revenue from the commercial harvest of red snapper would be positive and thus so too would be the direct economic effects. These direct economic effects are expected to be slightly enhanced by the commercial season start date of the second Monday in July as red snapper are typically caught on trips targeting vermilion snapper and gag, which are likely to be open to commercial harvest at that time. Closure of vermilion snapper to commercial harvest may largely preclude commercial harvest of red snapper and thus the positive economic effects from a commercial fishing season. Elimination of the red snapper minimum size limit would also be expected to slightly enhance these positive economic effects as it would allow commercial vessels to harvest the ACL more quickly, thereby reducing costs and increasing profits. Conversely, the 75-lb (34-kg) commercial trip limit is expected to slightly reduce these positive economic effects by spreading harvest over more trips, thereby increasing costs and decreasing profits.

Similarly, if there is a recreational fishing season, NOR from trips targeting red snapper by for-hire vessels may be positive. However, relative to the commercial vessels, this outcome is less likely for for-hire vessels as the recreational ACL and the for-hire sector's share of the harvest would have

to be sufficiently great to induce targeting of red snapper and thereby increase target effort. Since the recreational ACL is expected to be relatively small in the short-term and the for-hire sector historically only accounted for 10 percent of red snapper target effort in the recreational sector, the increase in for-hire vessels' target effort is likely to be minimal in the short-term. NOR will only increase if target effort for red snapper increases.

Because target effort for red snapper has been historically high in July, a recreational fishing season start date of the second Friday in July may slightly increase NOR as red snapper are presumably more highly valued and thus trips are more likely to target red snapper at this time of year. Similarly, a one-fish bag limit may also slightly increase NOR by spreading harvest over a larger number of trips, which would increase NOR if the number of target trips increases. Elimination of the minimum size limit may also slightly increase NOR by allowing anglers to keep whatever size fish they catch, which would increase the value of a trip to anglers and thereby increase the probability of a trip being taken, or increasing trip length, which generates higher gross revenue per trip.

The analysis above indicates that the proposed changes would not be expected to cause a significant reduction in profits for a substantial number of small entities. Because this rule, if implemented, is not expected to have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

No duplicative, overlapping, or conflicting Federal rules have been identified. This rule would not establish any new reporting or record-keeping requirements.

List of Subjects in 50 CFR Part 622

Accountability measure, Annual Catch Limit, Fisheries, Fishing, Red Snapper, South Atlantic.

Dated: April 23, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.181, paragraph (b)(2) is revised to read as follows:

§ 622.181 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(2) *Red snapper.* Red snapper may not be harvested or possessed in or from the South Atlantic EEZ, except if NMFS determines a limited amount of red snapper may be harvested or possessed in or from the South Atlantic EEZ, as specified in § 622.193(y). Red snapper caught in the South Atlantic EEZ must be released immediately with a minimum of harm. In addition, for a person on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, the prohibition on the harvest or possession of red snapper applies in the South Atlantic, regardless of where such fish are harvested or possessed, *i.e.,* in state or Federal waters.

* * * * *

■ 3. In § 622.183, paragraph (b)(5) is added to read as follows:

§ 622.183 Area and seasonal closures.

* * * * *

(b) * * *

(5) *Closures of the commercial and recreational sectors for red snapper.*—(i) The commercial and recreational sectors for red snapper are closed (*i.e.,* red snapper may not be harvested or possessed, or sold or purchased) in or from the South Atlantic EEZ, except if NMFS determines a limited amount of red snapper may be harvested or possessed in or from the South Atlantic EEZ, as specified in § 622.193(y). If NMFS determines that commercial and recreational fishing seasons for red snapper may be established in a given fishing year, NMFS will announce the season opening dates in the **Federal Register**. The recreational fishing season would consist of consecutive Fridays, Saturdays, and Sundays, unless otherwise specified. NMFS will project the length of the recreational fishing season and announce the recreational fishing season end date in the **Federal Register**. See 622.193(y), for establishing the end date of the commercial fishing season.

(ii) If the RA determines tropical storm or hurricane conditions exist, or are projected to exist, in the South Atlantic, during a commercial or recreational fishing season, the RA may modify the opening and closing dates of the fishing season by filing a notification to that effect with the Office of the Federal Register, and announcing via NOAA Weather Radio and a Fishery Bulletin any change in the dates of the red snapper commercial or recreational fishing season.

(iii) If the projected commercial or recreational fishing season is determined by NMFS to be 3 days or less, then the commercial or recreational fishing season will not open for that fishing year.

§ 622.185 [Amended]

■ 4. In § 622.185, paragraph (a)(1) is removed and reserved.

■ 5. In § 622.187, paragraphs (b)(4) and (9) are revised to read as follows:

§ 622.187 Bag and possession limits.

* * * * *

(b) * * *

(4) *Snappers, combined*—10. However, excluded from this 10-fish bag limit are cubera snapper, measuring 30 inches (76.2 cm), TL, or larger, in the South Atlantic off Florida, and red snapper and vermilion snapper. (See § 622.181(b)(2) for the prohibitions on harvest or possession of red snapper, except during a limited recreational fishing season, and § 622.181(c)(1) for limitations on cubera snapper measuring 30 inches (76.2 cm), TL, or larger, in or from the South Atlantic EEZ off Florida.)

* * * * *

(9) *Red snapper*—0, except during a limited recreational fishing season, as specified in § 622.183(b)(5), during which time the bag limit is 1 fish.

* * * * *

■ 6. In § 622.191, paragraph (a)(9) is added to read as follows:

§ 622.191 Commercial trip limits.

* * * * *

(a) * * *

(9) *Red snapper.* During a limited commercial fishing season, as specified in § 622.183(b)(5), and until the commercial ACL specified in § 622.49(b)(25)(i) is reached, 75 lb (34 kg), gutted weight. See § 622.49(b)(25)(i) for the limitations regarding red snapper after the commercial ACL is reached.

* * * * *

■ 7. In § 622.192, paragraph (j) is revised to read as follows:

§ 622.192 Restrictions on sale/purchase.

* * * * *

(j) No person may sell or purchase a red snapper harvested from or possessed

in the South Atlantic, *i.e.,* state or Federal waters, by a vessel for which a Federal commercial vessel permit for South Atlantic snapper-grouper has been issued, except if NMFS determines a limited commercial fishing season for red snapper is allowable, as specified in § 622.183(b)(5).

■ 8. In § 622.193, paragraph (y) is added to read as follows:

§ 622.193 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(y) *Red snapper*—(1) *Commercial sector.* The commercial ACL for red snapper is zero. However, if NMFS determines that the previous year's estimated red snapper landings and dead discards are less than the ABC, limited red snapper harvest and possession may be allowed for the current fishing year and the commercial ACL value would be determined using the formula described in the FMP. The AA will file a notification with the Office of the Federal Register to announce the limited commercial ACL for the current fishing year. NMFS will monitor commercial landings during the limited season, and if commercial landings, as estimated by the SRD, reach or are projected to reach the commercial ACL, based on the formula described in the FMP, the AA will file a notification with the Office of the Federal Register to close the commercial sector for red snapper for the remainder of the year. On and after the effective date of the closure notification, all sale or purchase of red snapper is prohibited and harvest or possession of red snapper is limited to the bag and possession limits. This bag and possession limit and the prohibition on sale/purchase apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested or possessed, *i.e.,* in state or Federal waters.

(2) *Recreational sector.* The recreational ACL for red snapper is zero. However, if NMFS determines that the previous year's estimated red snapper landings and dead discards are less than the ABC, limited red snapper harvest and possession may be allowed for the current fishing year and the recreational ACL value would be determined using the formula described in the FMP. The AA will file a notification with the Office of the Federal Register to announce the limited recreational ACL and the length of the recreational fishing season for the current fishing year. The length of the recreational fishing season for red snapper serves as the in-season accountability measure. See § 622.183(b)(5) for details on the recreational fishing season. On and after the effective date of the recreational closure notification, the bag and possession limits for red snapper are zero.

[FR Doc. 2013–10000 Filed 4–26–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130403319–3319–01]

RIN 0648–BD13

Fisheries of the Northeastern United States; Recreational Management Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Fishing Year 2013

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes management measures for the 2013 summer flounder, scup, and black sea bass recreational fisheries. This rule also proposes to implement an increase in the 2013 and 2014 black sea bass specifications, consistent with a new acceptable biological catch recommendation. The implementing regulations for these fisheries require NMFS to publish recreational measures for the fishing year and to provide an opportunity for public comment. The intent of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources.

DATES: Comments must be received by 5 p.m. local time, on May 14, 2013.

ADDRESSES: You may submit comments on this document, identified NOAA–NMFS–2013–0060, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0060,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Fax:* (978) 281–9135, Attn: Comments on 2013 Proposed Summer Flounder, Scup, and Black Sea Bass Recreational Measures, NOAA–NMFS–2013–0060.
- *Mail and Hand Delivery:* John K. Bullard, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2013 FSB Recreational Measures.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of the Supplemental Environmental Assessment and Initial Regulatory Flexibility Analysis (SEA/IRFA) and other supporting documents for the recreational harvest measures are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The recreational harvest measures document is also accessible via the Internet at: *http://www.nero.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Policy Analyst, (978) 281–9218.

SUPPLEMENTARY INFORMATION:

General Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively under the provisions of the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) developed by the Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission), in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include summer flounder (*Paralichthys dentatus*) in U.S. waters of the Atlantic Ocean from the southern border of North Carolina (NC) northward to the U.S./Canada border, and scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35 E. 13.3′ N. lat. (the latitude of Cape

Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border.

The Council prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 648, subparts A (general provisions), G (summer flounder), H (scup), and I (black sea bass). General regulations governing fisheries of the Northeastern U.S. also appear at 50 CFR part 648. States manage these three species within 3 nautical miles (4.83 km) of their coasts, under the Commission's plan for summer flounder, scup, and black sea bass. The applicable species-specific Federal regulations govern vessels and individual fishermen fishing in Federal waters of the exclusive economic zone (EEZ), as well as vessels possessing a summer flounder, scup, or black sea bass Federal charter/party vessel permit, regardless of where they fish.

Recreational Management Measures Background

The Council process for devising recreational management measures to recommend to NMFS for rulemaking is generically described in the following section. All meetings are open to the public and the materials utilized during such meetings, as well as any documents created to summarize the meeting results, are public information and typically posted on the Council's Web site (*www.mafmc.org*) or are available from the Council by request. Extensive background on the 2013 recreational management measures recommendation process is therefore not repeated in this preamble.

The FMP established monitoring committees for the three fisheries, consisting of representatives from the Commission, the Council, state marine fishery agency representatives from MA to NC, and NMFS. The FMP's implementing regulations require the monitoring committees to review scientific and other relevant information annually and to recommend management measures necessary to constrain landings within the recreational harvest limits established for the summer flounder, scup, and black sea bass fisheries for the upcoming fishing year. The FMP limits the choices for the types of measures to minimum fish size, possession limit, and fishing season.

The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Management Board (Board) then consider the monitoring committees' recommendations and any public comment in making their recommendations to the Council and the Commission, respectively. The Council reviews the recommendations of the Demersal Species Committee, makes its own recommendations, and forwards them to NMFS for review. The Commission similarly adopts recommendations for the states. NMFS is required to review the Council's recommendations to ensure that they are consistent with the targets specified for each species in the FMP and all applicable laws and Executive Orders before ultimately implementing measures for Federal waters.

Proposed Specifications and 2013 and 2014 Recreational Management Measures

In this rule, NMFS proposes management measures for the 2013 summer flounder, scup, and black sea bass recreational fisheries. This rule also proposes to implement an increase in the 2013 and 2014 black sea bass specifications, consistent with a new acceptable biological catch recommendation. All minimum fish sizes discussed hereafter are total length measurements of the fish, *i.e.,* the straight-line distance from the tip of the snout to the end of the tail while the fish is lying on its side. For black sea bass, total length measurement does not include the caudal fin tendril. All possession limits discussed below are per person.

Black Sea Bass Specifications

The process for establishing specifications is summarized here and is described in detail in the specifications final rule (December 31, 2012; 77 FR 76842). The Council's Scientific and Statistical Committee (SSC) met on July 25 and 26, 2012, to recommend acceptable biological catches (ABC) for the 2013–2015 summer flounder, scup, and black sea bass fisheries. The Summer Flounder, Scup, and Black Sea Bass Monitoring Committees met on July 27, 2012, to discuss specification-related recommendations for the three fisheries. Following the SSC and Monitoring Committee meetings, the Council and the Board met to consider the recommendations of the SSC, the three monitoring committees, and public comments, and made their specification recommendations at a joint meeting held on August 15, 2012. At that time, the SSC recommendation for the 2013 black sea bass fishery was an ABC of 4.5 million lb (2,041 mt). Black sea bass remains a data-poor stock, with relatively high uncertainty for the purposes of calculating ABC. The SSC rejected the overfishing limit (OFL) estimate provided from the stock assessment, stating that it was highly uncertain and not sufficiently reliable to use as the basis of management advice. The SSC recommended a 3-year specification period, with a constant harvest strategy that would implement the same ABC for 2013–2015. However, the Council only endorsed the ABC for 2013, and recommended the annual catch limit (ACL), annual catch target (ACT), and quotas for 2013 only. The Council decided to recommend specifications for just 2013 in the hope that additional information would be available for the SSC in the coming year.

At its December 2012 meeting, the Council requested that the SSC revisit the 2013 black sea bass specifications and make a recommendation for the 2014 fishing year. On January 23, 2013, the SSC met to reconsider these specifications and recommended an increase in the specifications for both the 2013 and 2014 fishing years. The SSC revised its recommendation for the 2013 and 2014 black sea bass ABC to 5.5 million lb (2,495 mt). The Council voted at its February 2013 meeting to recommend that the new ABC be implemented in conjunction with the recreational management measures. In this rule, NMFS is proposing the Council's recommended specifications for black sea bass. The following table provides the current specifications for black sea bass for 2013 and the proposed specifications for 2013 and 2014.

	Established specifications for 2013		Proposed specifications for 2013 and 2014	
	million lb	mt	million lb	mt
ABC	4.50	2,041	5.50	2,495
Commercial ACL & ACT	2.13	966	2.60	1,179
Commercial Quota	1.78	805	2.17	984
Recreational ACL & ACT	2.37	1,075	2.90	1,315

	Established specifications for 2013		Proposed specifications for 2013 and 2014	
	million lb	mt	million lb	mt
Recreational Harvest Limit	1.85	838	2.26	1,025

Proposed 2013 Recreational Management Measures

NMFS is proposing the following measures that would apply in the Federal waters of the EEZ and to all federally permitted party/charter vessels with applicable summer flounder, scup, or black sea bass permits regardless of where they fish for the 2013 recreational summer flounder, scup, and black sea bass fisheries. For summer flounder, use of state-by-state conservation equivalency measures, which are the status quo measures; for scup, a 10-inch (25.4-cm) minimum fish size, a 30-fish per person possession limit, and an open season of January 1 through December 31; and, for black sea bass, a 12.5-inch (31.8-cm) minimum fish size, a 20-fish per person possession limit for open seasons of May 19 through October 14 and November 1 through December 31. NMFS may implement more restrictive black sea bass measures, as recommended by the Council (*i.e.,* a 12.5-inch (31.8-cm) minimum fish size, a 10-fish per person possession limit and an open season of June 1–September 5), for Federal waters if the Commission is unable to develop and implement state-waters measures that, when paired with the Council's recommended measures, provide the necessary conservation to ensure the 2013 recreational harvest limit will not be exceeded. More detail on these proposed measures is provided in the following sections.

Summer Flounder Recreational Management Measures

NMFS proposes to implement the use of conservation equivalency to manage the 2013 summer flounder recreational fishery. The 2013 recreational harvest limit for summer flounder is 7.63 million lb (3,459 mt), as published in the final rule implementing the 2013 specifications (December 31, 2012; 77 FR 76942). Projected landings for 2012 are approximately 6.92 million lb (3,139 mt), well below the 2013 recreational harvest limit, therefore, no reduction in landings is needed. As a result, the Council and Commission have recommended the use of conservation equivalency to manage the 2013 summer flounder recreational fishery.

NMFS implemented Framework Adjustment 2 to the FMP on July 29, 2001 (66 FR 36208), to permit the use of conservation equivalency to manage the recreational summer flounder fishery. Conservation equivalency allows each state to establish its own recreational management measures (possession limits, minimum fish size, and fishing seasons) to achieve its state harvest limit partitioned by the Commission from the coastwide recreational harvest limit, as long as the combined effect of all of the states' management measures achieves the same level of conservation as would Federal coastwide measures.

The Council and Board annually recommend that either state- or region-specific recreational measures be developed (conservation equivalency) or coastwide management measures be implemented to ensure that the recreational harvest limit will not be exceeded. Even when the Council and Board recommend conservation equivalency, the Council must specify a set of coastwide measures that would apply if conservation equivalency is not approved for use in Federal waters.

When conservation equivalency is recommended, and following confirmation that the proposed state measures developed through the Commission's technical and policy review processes achieve conservation equivalency, NMFS may waive the permit condition found at § 648.4(b), which requires Federal permit holders to comply with the more restrictive management measures when state and Federal measures differ. In such a situation, federally permitted summer flounder charter/party permit holders and individuals fishing for summer flounder in the EEZ would then be subject to the recreational fishing measures implemented by the state in which they land summer flounder, rather than the coastwide measures.

In addition, the Council and the Board must recommend precautionary default measures when recommending conservation equivalency. The Commission would require adoption of the precautionary default measures by any state that either does not submit a summer flounder management proposal to the Commission's Summer Flounder Technical Committee, or that submits measures that would exceed the Commission-specified harvest limit for that state.

Much of the conservation equivalency measures development process happens at both the Commission and individual state level. The selection of appropriate data and analytic techniques for technical review of potential state conservation equivalent measures and the process by which the Commission evaluates and recommends proposed conservation equivalent measures is wholly a function of the Commission and its individual member states. Individuals seeking information regarding the process to develop specific state measure or the Commission process for technical evaluation of proposed measures should contact the marine fisheries agency in the state of interest, the Commission, or both.

This year, the Commission has proposed an addendum to its Summer Flounder FMP to implement 2013 recreational fishing rules for summer flounder similar to those from 2012, partly to minimize the reductions facing two states (New York and New Jersey) and partly to allow for a different distribution of fishing opportunities in the 2013 season. The proposed approach is intended to allow states to capitalize on harvest opportunities that would be foregone by states that choose not to fully utilize their 2013 harvest target. Specifically, the addendum proposes a mechanism to allow states access to the summer flounder recreational harvest limit that is projected to not be harvested in 2013. The addendum responds to an unintended consequence of using conservation equivalency to stay within the annually established coastwide recreational harvest limit for summer flounder, and to respond to the changes in the fishery since the 1998 state landings targets were established. More information on this proposed addendum is available from the Commission (*www.asmfc.org*).

Once states select their final 2013 summer flounder management measures through their respective development, analytical, and review processes and submit them to the Commission, the Commission will conduct further review and evaluation of the state-submitted proposals, ultimately notifying NMFS as to which individual state proposals have been approved or disapproved. NMFS has no overarching authority in

the development of state or Commission management measures, but is an equal participant along with all the member states in the review process. NMFS retains the final authority either to approve or to disapprove the use of conservation equivalency in place of the coastwide measures in Federal waters, and will publish its determination as a final rule in the **Federal Register** to establish the 2013 recreational measures for these fisheries.

States that do not submit conservation equivalency proposals, or whose proposals are disapproved by the Commission, will be required by the Commission to adopt the precautionary default measures. In the case of states that are initially assigned precautionary default measures, but subsequently receive Commission approval of revised state measures, NMFS will publish a notice in the **Federal Register** announcing a waiver of the permit condition at § 648.4(b).

The 2013 precautionary default measures recommended by the Council and Board are for a 20.0-inch (50.8-cm) minimum fish size, a possession limit of two fish, and an open season of May 1 through September 30, 2013.

In this action, NMFS proposes to implement conservation equivalency with a precautionary default backstop, as previously outlined, for states that either fail to submit conservation equivalent measures or whose measures are not approved by the Commission. NMFS proposes the alternative of coastwide measures, as previously described, for use if conservation equivalency is not approved in the final rule. The coastwide measures would be waived if conservation equivalency is approved in the final rule.

Scup Recreational Management Measures

NMFS is proposing to implement the Council and Commission's recommended scup recreational management measures for 2013 in Federal waters. The 2013 scup recreational harvest limit is 7.55 million lb (3,425 mt), as published in final rule (December 31, 2012; 77 FR 76942). Estimated 2012 scup recreational landings are 4.06 million lb (1,842 mt), well below the 2013 recreational harvest limit, therefore, no reduction in landings is needed. The Council and Commission's recommended measures for the 2013 scup recreational fishery are for a 10-in (25.4-cm) minimum fish size, a 30-fish per person possession limit, and an open season of January 1 through December 31. These measures are intended to promote an increase in recreational scup fishing in order to achieve the recreational harvest limit.

Black Sea Bass Recreational Management Measures

NMFS is proposing to implement the Council's recommended recreational management measures to reduce landings for black sea bass. The proposed 2013 black sea bass recreational harvest limit is 2.26 million lb (1,025 mt). The 2012 recreational harvest limit was 1.32 million lb (599 mt), and the projected 2012 recreational landings were 2.99 million lb (1,356 mt). The projected 2012 landings are above the 2012 recreational harvest limit and both the previously established and the proposed recreational harvest limit for 2013. The Council and the Commission, therefore, will need to establish management measures to reduce landings in 2013 to a level below the 2013 recreational harvest limit. The majority of the recreational black sea bass fishery occurs in state waters. As such, the Commission agreed to make more significant changes to the state-waters measures to ensure the 2013 recreational harvest limit is not exceeded.

In light of the Commission's effort to make changes to the state-water measures, the Council recommended a 12.5-inch (31.8-cm) minimum fish size and 20-fish possession limit for an open season of May 19–October 14 and November 1–December 31, and NMFS proposes to implement these recommended measures. However, if the Commission is unable to implement measures that would constrain landings in state waters sufficiently, NMFS may implement the Council's recommended measures designed to achieve the full necessary reduction in landings in Federal waters: A 12.5-inch (31.8-cm) minimum fish size; a 10-fish possession limit; and an open season of June 1–September 5. In comparison, the 2012 recreational harvest measures for black sea bass were a 12.5-inch (31.8-cm) minimum size, a 15-fish possession limit for an open season of January 1–February 29, and a 12.5-inch (31.8-cm) minimum fish size and 25-fish possession limit for open seasons of May 19–October 14 and November 1–December 31.

The decision to implement the Council's recommended measures for Federal waters will be contingent on the as of yet to be completed analyses and recommendation from the Commission, and any such decision would be reflected in the final rule published in the **Federal Register**.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA), which is included in the Supplemental EA and supplemented by information contained in the preamble to this proposed rule. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section of the preamble and in the **SUMMARY** of this proposed rule. A summary of the IRFA follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

This action does not introduce any new reporting, recordkeeping, or other compliance requirements. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

The proposed recreational management measures could affect any recreational angler who fishes for summer flounder, scup, or black sea bass in the EEZ or on a party/charter vessel issued a Federal permit for summer flounder, scup, and/or black sea bass. However, the only regulated entities affected by this action are party/charter vessels issued a Federal permit for summer flounder, scup, and/or black sea bass, and so the IRFA focuses upon the expected impacts on this segment of the affected public. These vessels are all considered small entities for the purposes of the RFA, *i.e.,* businesses in the recreational fishery with gross revenues of up to $7.0 million. These small entities can be specifically identified in the Federal vessel permit database and would be impacted by the recreational measures, regardless of whether they fish in Federal or state waters. Although fishing opportunities by individual recreational anglers may be impacted by this action, they are not considered small entities under the RFA.

The Council estimated that the proposed measures could affect any of the 852 vessels possessing a Federal charter/party permit for summer flounder, scup, and/or black sea bass in 2012, the most recent year for which complete permit data are available. However, only 355 vessels reported active participation in the 2012 recreational summer flounder, scup, and/or black sea bass fisheries.

Economic Impacts of the Proposed Action Compared to Significant Non-Selected Alternatives

The IRFA identified three alternatives in this action: The no-action alternatiave, the status quo alternative and the preferred alternative. The no-action alternative (*i.e.,* maintenance of the regulations as codified) is: (1) For summer flounder, coastwide measures of a 18-inch (45.7-cm) minimum fish size, a 4-fish possession limit, and an open season from May 1 through September 30; (2) for scup, a 10.5-inch (26.7-cm) minimum fish size, a 20-fish possession limit, and an open season of January 1 through December 31; and (3) for black sea bass, a 12.5-inch (31.8-cm) minimum size, a 15-fish possession limit for January 1–February 28, and a 25-fish possession limit and open seasons of May 19 through October 14 and November 1 through December 31. The status quo alternative is: (1) For summer flounder, conservation equivalency, with precautionary default measures of a 20-inch (50.8-cm) minimum fish size, a 2-fish possession limit, and an open season of May 1 through September 30; (2) for scup and black sea bass, the same as the no action alternative. The proposed alternative is: (1) For summer flounder, the same as the status quo alternative; (2) for scup, a 10-inch (25.4-cm) minimum fish size, a 30-fish possession limit, and an open season of January 1 through December 31; and (3) for black sea bass, a 12.5-inch (31.8-cm) minimum fish size, and a 20-fish possession limit for open seasons of May 19 through October 14 and November 1 through December 31.

The impacts of the alternatives on small entities (*i.e.,* federally permitted party/charter vessels in each state in the Northeast region) were analyzed, assessing potential changes in gross revenues for all 18 combinations of alternatives proposed. Although NMFS's RFA guidance recommends assessing changes in profitability as a result of proposed measures, the quantitative impacts were instead evaluated using expected changes in party/charter vessel revenues as a proxy for profitability. This is because reliable cost and revenue information is not available for charter/party vessels at this time. Without reliable cost and revenue data, profits cannot be discriminated from gross revenues. As reliable cost data become available, impacts to profitability can be more accurately forecast. Similarly, changes to long-term solvency were not assessed, due both to the absence of cost data and because the recreational management measures change annually according to the specification-setting process. Effects of the various management measures were analyzed by employing quantitative approaches, to the extent possible. Where quantitative data were not available, qualitative analyses were utilized.

Because the proposed action is as or less restrictive than the other alternatives considered and provides the same or more opportunity for recreational fishing, the affected regulated entities are expected to be able to maximize fishery-related revenue under the preferred alternative relative to the non-preferred alternatives. The preferred alternative for scup would decrease the minimum size and increase the possession limit, and the preferred alternative for black sea bass is only slightly more restrictive than the status quo. In contrast, the non-preferred alternatives for scup would result in a larger minimum size and a lower possession limit, and the non-preferred alternatives for black sea bass that would not constrain recreational landings to appropriate level.

For summer flounder, the preferred alternative for conservation equivalency is expected to increase fishing opportunities because, under the Commission's plan, almost all states are authorized to increase landings in 2013. The Commission has also proposed an addendum to implement 2013 recreational fishing rules for summer flounder similar to those from 2012, partly to minimize the reductions facing two states (New York and New Jersey) and partly to allow for the more equitable distribution of fishing opportunities in the 2013 season. The proposed approach is intended to allow states to capitalize on harvest opportunities that are foregone by states that choose not to fully utilize their 2013 harvest target. Specifically, the addendum proposes a mechanism to allow states access to the summer flounder recreational harvest limit that is projected to not be harvested in 2013. The Addendum responds to an unintended consequence of using conservation equivalency to stay within the annually established coastwide recreational harvest limit for summer flounder, and to respond to the changes in the fishery since the 1998 state landings targets were established.

NMFS did not consider any alternatives that would provide additional fishing opportunities beyond what was recommended by the Council because any such alternative would increase the risk of the fishery exceeding the recreational harvest limit, which could result in overfishing the stock and/or exceeding the annual catch limit. This would be contrary to the goals and objectives of the Magnuson-Stevens Act.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 24, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.104, paragraph (b) is revised to read as follows:

§ 648.104 Summer flounder minimum fish sizes.

* * * * *

(b) *Party/charter permitted vessels and recreational fishery participants.* Unless otherwise specified pursuant to § 648.107, the minimum size for summer flounder is 18 inches (45.7 cm) TL for all vessels that do not qualify for a moratorium permit under § 648.4(a)(3), and charter boats holding a moratorium permit if fishing with more than three crew members, or party boats holding a moratorium permit if fishing with passengers for hire or carrying more than five crew members.

* * * * *

■ 3. In § 648.106, paragraph (a) is revised to read as follows:

§ 648.106 Summer flounder possession restrictions.

(a) *Party/charter and recreational possession limits.* Unless otherwise specified pursuant to § 648.107, no person shall possess more than four

summer flounder in, or harvested from, the EEZ, unless that person is the owner or operator of a fishing vessel issued a summer flounder moratorium permit, or is issued a summer flounder dealer permit. Persons aboard a commercial vessel that is not eligible for a summer flounder moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a summer flounder moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.102.

* * * * *

■ 4. Section 648.107 is revised to read as follows:

§ 648.107 Conservation equivalent measures for the summer flounder fishery.

(a) The Regional Administrator has determined that the recreational fishing measures proposed to be implemented by Massachusetts through North Carolina for 2013 are the conservation equivalent of the season, minimum fish size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively. This determination is based on a recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission.

(b) Federally permitted vessels subject to the recreational fishing measures of this part, and other recreational fishing vessels subject to the recreational fishing measures of this part and registered in states whose fishery management measures are not determined by the Regional Administrator to be the conservation equivalent of the season, minimum size, and possession limit prescribed in §§ 648.104(b), 648.105, and 648.106(a), respectively, due to the lack of, or the reversal of, a conservation equivalent recommendation from the Summer Flounder Board of the Atlantic States Marine Fisheries Commission, shall be subject to the following precautionary default measures: Season—May 1 through September 30; minimum size—20.0 inches (50.80 cm); and possession limit—two fish.

■ 5. In § 648.126, paragraph (b) is revised to read as follows:

§ 648.126 Scup minimum fish sizes.

* * * * *

(b) *Party/Charter permitted vessels and recreational fishery participants.* The minimum size for scup is 10 inches (25.4 cm) TL for all vessels that do not have a moratorium permit, or for party and charter vessels that are issued a moratorium permit but are fishing with passengers for hire, or carrying more than three crew members if a charter boat, or more than five crew members if a party boat.

* * * * *

■ 6. Section 648.127 is revised to read as follows:

§ 648.127 Scup recreational fishing season.

Fishermen and vessels that are not eligible for a moratorium permit under § 648.4(a)(6), may possess scup year-round, subject to the possession limit specified in § 648.128(a). The recreational fishing season may be adjusted pursuant to the procedures in § 648.122.

■ 7. In § 648.128, paragraph (a) is revised to read as follows:

§ 648.128 Scup possession restrictions.

(a) *Party/Charter and recreational possession limits.* No person shall possess more than 30 scup in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a scup moratorium permit, or is issued a scup dealer permit. Persons aboard a commercial vessel that is not eligible for a scup moratorium permit are subject to this possession limit. The owner, operator, and crew of a charter or party boat issued a scup moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.122.

* * * * *

■ 8. In § 648.145, paragraph (a) is revised to read as follows:

§ 648.145 Black sea bass possession limit.

(a) During the recreational fishing season specified at § 648.146, no person shall possess more than 20 black sea bass in, or harvested from, the EEZ unless that person is the owner or operator of a fishing vessel issued a black sea bass moratorium permit, or is issued a black sea bass dealer permit. Persons aboard a commercial vessel that is not eligible for a black sea bass moratorium permit may not retain more than 20 black sea bass during the recreational fishing season specified at § 648.146. The owner, operator, and crew of a charter or party boat issued a black sea bass moratorium permit are subject to the possession limit when carrying passengers for hire or when carrying more than five crew members for a party boat, or more than three crew members for a charter boat. This possession limit may be adjusted pursuant to the procedures in § 648.142.

* * * * *

■ 9. Section 648.146 is revised to read as follows:

§ 648.146 Black sea bass recreational fishing season.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(7), and fishermen subject to the possession limit specified in § 648.145(a), may only possess black sea bass from May 19 through October 14, and November 1 through December 31, unless this time period is adjusted pursuant to the procedures in § 648.142.

[FR Doc. 2013–10033 Filed 4–26–13; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 78, No. 82
Monday, April 29, 2013

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 23, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by May 29, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street, NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: National Management Information System (Wildlife Service).

OMB Control Number: 0579–0335.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS), Wildlife Services (WS), is a service program that responds to requests by persons and agencies needing help with wildlife damage. Assistance is available to all citizens upon request. The primary statutory authority for the APHIS/WS program is the Act of March 1931 (7 U.S.C. 426–426c; 46 Stat. 1468) as amended. Section 426 of the Act authorizes the Secretary of Agriculture to conduct a program of wildlife services with respect to injurious animal species and take any action the Secretary considers necessary in conducting the program. Information provided by customers in the WS programs is voluntary so that WS can prepare to help them. APHIS/WS will collect information using several forms.

Need and Use of the Information: Information collected in most situations is used in routine business communication activities by WS as part of its cooperative programs initiated by request from the public and government entities. The collected information from the forms will help WS modify and improve its programs to better fulfill mission objectives, suit the needs of Cooperators, and provide increasingly superior service.

Description of Respondents: Farms; individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 117,772.

Frequency of Responses: Reporting: On occasion; biennially; annually.

Total Burden Hours: 5,448.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–09930 Filed 4–26–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northeast Region Permit Family of Forms.

OMB Control Number: 0648–0202.

Form Number(s): NA.

Type of Request: Regular submission (revision and extension of a current information collection).

Number of Respondents: 14,852.

Average Hours per Response: Vessel permits, 45 minutes for initial and 30 for renewal; dealer permits, 15 minutes for initial and 5 minutes for renewal; operator permits, 1 hour; request for vessel replacement or upgrade, 3 hours; permit history retention, 30 minutes; vessel monitoring system (VMS) installation, 1 hour; activation notification and certification form, 5 minutes; non-automated reports through VMS, 5 minutes; Good Samaritan Days at Sea (DAS) credits, 1 hour; standing by entangled whale notification, 2 hours and request for DAS credit, 30 minutes; DAS credit for canceled trip: Email to coordinate monitored landing, 5 minutes and request for credit, 10 minutes; VMS power down exemption requests, 30 minutes; requests for regulated exemptions for specific fisheries, gear and areas, 5 minutes; gillnet designation and requests for tags: designation 10 minutes, requests for tags, 2 minutes; lobster area waiver, 20 minutes and request for tags, 2 minutes; state quota transfers, 1 hour; vessel owner single letter request, 5 minutes.

Burden Hours: 16,421.

Needs and Uses: This request is for revision and extension of a current information collection.

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the National Oceanic and Atmospheric Administration (NOAA)/National

Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect information from users of the resource.

As regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has promulgated rules for the issuance of permits to individuals and organizations participating in Federally controlled fisheries in order to: (1) Register fishermen, fishing vessels, fish dealers and processors, (2) List the characteristics of fishing vessels and/or dealer/processor operations, (3) Exercise influence over compliance (e.g. withhold issuance pending collection of unpaid penalties), (4) Provide a mailing list and email list for the dissemination of important information to the industry, (5) Register participants to be considered for limited entry, and (6) Provide a universe for data collection samples. Identification of the participants, their gear types, vessels, and expected activity levels is an effective tool in the enforcement of fishery regulations.

Limited access fishing permits, where entry is reviewed during a one-time application period, place size, tonnage, and horsepower restrictions on the ability of a vessel owner to upgrade or replace their vessel. If a vessel owner wishes to upgrade any of the specifications of his/her vessel such as length overall, net tonnage, gross tonnage, horsepower, or vessel fish hold capacity, he/she must submit, in writing, a request for a vessel upgrade. A request, in writing, also must be made in order to replace one limited access permitted vessel with another as vessel size restrictions are limited to 10-percent above the baseline length overall, gross, and net tonnage, 20-percent above the baseline horsepower, and 10-percent above the vessel hold capacity measurement for limited access vessels with Tier 1 or 2 Atlantic mackerel permits.

Vessels with particular permits are also required to use an electronic vessel monitoring system (VMS) to declare their intent to fish before starting a particular trip, change their intent to fish during a trip, and to report real-time catch and discard information. While vessels are also required to report catch information weekly or monthly depending on their permit through vessel trip reports (VTRs) (VTR collection approved in OMB Control No. 0648–0212), it is often necessary to have daily catch reporting in order to have a real-time understanding of the operation of the fishery. Real time catch reporting is especially important for high volume fisheries, where large amounts of fish are landed in short periods of time, so that the fishery can be shut down when approaching the annual, regional, or seasonal quota.

Vessels are also required to request, in writing, participation in any of the various exemption programs offered in the Northeast region. Exemption programs may allow a vessel to fish in an area that is limited to vessels of a particular size, using a certain gear type, or fishing for a particular species. Vessels are also required to request gillnet and lobster tags through the Northeast region permit office when using gillnet gear or lobster traps. Lastly, vessel owners that own multiple vessels, but would like to request communication from NMFS be consolidated into one mailing (and not separate mailings for each vessel), may request the single letter vessel owner option to improve efficiency of their business practice.

This revision/extension removes several requirements from this collection, either because they are no longer valid, or because they have been moved to other information collections.

Affected Public: Business or other for-profit organizations.

Frequency: Annually, every three years, daily and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov*.

Dated: April 24, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–10003 Filed 4–26–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Business and Professional Classification Report (SQ–CLASS)

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before June 28, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Scott Handmaker, Chief, Economic Classifications Operations Branch, U.S. Census Bureau, 8K149, Washington, DC 20233, Telephone: 301–763–7107; Email: *Scott.P.Handmaker@census.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Business and Professional Classification Report survey (SQ–CLASS) collects information on new businesses to obtain proper industry classification for use in economic surveys conducted by the U.S. Census Bureau. The survey, conducted quarterly, samples businesses with newly assigned Employer Identification Numbers (EINs) from the Internal Revenue Service (IRS). Businesses can only be selected once for the survey. The SQ–CLASS form collects data about a business in such areas as primary business activity, company structure, size, and business operations. This information is used to update the sampling frame for current business surveys, which ensures high quality economic estimates. Additionally, by ensuring proper industry classification,

this survey reduces respondent burden for the five-year Economic Census, as businesses will be mailed Economic Census forms specifically tailored to their industry.

We plan a few changes to the form. Most of the changes to the questionnaire will be aesthetic. The questionnaire will be redeveloped in the Census Bureau's standard form design software. This will give it the look of the other Census Bureau's economic surveys and the Economic Census. Minimal changes will be made to the wording and organization of existing questions and instructions to ensure consistency across the economic surveys and/or the Economic Census.

II. Method of Collection

Information is collected by Internet, mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607–0189.

Form Number: SQ–CLASS.

Type of Review: Regular.

Affected Public: Businesses and other organizations in the United States.

Estimated Number of Respondents: 52,000 business firms.

Estimated Time per Response: 13 minutes.

Estimated Total Annual Burden Hours: 11,267 hours.

Estimated Total Annual Cost: $340,489.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S. Code 182 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 23, 2013.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–09977 Filed 4–26–13; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 92–11A001]

Export Trade Certificate of Review

ACTION: Notice of Issuance of an amended Export Trade Certificate of Review to Aerospace Industries Association of America (''AIA'') (Application #92–11A001).

SUMMARY: The U.S. Department of Commerce issued an amended Export Trade Certificate of Review to Aerospace Industries Association of America on April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Joseph E. Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2013).

The Office of Competition and Economic Analysis (''OCEA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Secretary of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

AIA's Export Trade Certificate of Review has been amended to:

1. Add the following new Members of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): 3M Company (St. Paul, MN); Aireon LLC (McLean, VA); Align Aerospace, LLC (Chatsworth, CA); Allied Telesis, Inc. (Bothell, WA); ARINC Aerospace (Annapolis, MD), Benchmark Electronics, Inc. (Angleton, TX); BRS Aerospace (St. Paul, MN); Camcode Division of Horizons, Inc. (Cleveland, OH); CPI Aerostructures, Inc. (Edgewood, NY); Deltek, Inc. (Herndon, VA); Denison Industries, Inc. (TX); ENSCO, Inc. (Falls Church); Ernst & Young LLP; (New York, NY); Fluor Corporation (Irving, TX); Galaxy Technologies (Winfield, KS), GKN Aerospace North America (Irving, TX); Huntington Ingalls Industries, Inc. (Newport News, VA); ITT Exelis (McLean, VA); Microsemi Corporation (Aliso Viejo, CA); Ontic Engineering and Manufacturing, Inc. (Chatsworth, CA); Seal Science, Inc. (Irvine, CA); TASC, Inc. (Chantilly, VA); W.L. Gore & Associates, Inc. (Newark, DE).

2. Delete the following companies as Members of AIAA's Certificate: AirDat LLC; AMSAFE Aviation; ANSYS Inc.; Armorworks Enterprises, LLC; Comtech AeroAstro, Inc.; Crown Consulting, Inc.; DynCorp International, LLC; Integral Systems, Inc.; ITT Corporation; Metron Aviation; Micro-Tronics; Paragon Space Development Corporation; Qwaltec, Inc.; Remmele Engineering, Inc.; Sanima-SCI Corporation; SM&A; Southern California Braiding Company, Inc.; TIMCO Aviation Services, Inc.; UFC Aerospace; Vermont Composites, Inc.; WIPRO Technologies.

3. Change in name or address for the following Members: Meggitt Vibro-Meter, Inc. (Londonberry, NH) has been replaced by Meggitt-USA, Inc. (Simi, CA); PPG Aerospace (Symlar, CA) has changed its name to PPG Aerospace-Sierracin Corporation; and Woodward Governor Company (Fort Collins, CO) has changed its name to Woodward, Inc.

Dated: April 19, 2013.

Joseph E. Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2013–09959 Filed 4–26–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC643

North Pacific Fishery Management Council (NPFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI) Groundfish Plan Teams will meet by teleconference and webcast

at *https://npfmc.webex.com* to allow the public to watch and hear presentations.

DATES: The meeting will be held on May 13, 2013 at 2:30 (PDT).

ADDRESSES: *Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo or Diana Stram, NPFMC; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Groundfish Plan Teams will convene jointly to recommend Pacific cod models for inclusion in the 2013 Pacific cod stock assessments for the GOA and BSAI. The stock assessments are the bases for the selection of Pacific cod harvest specifications for the GOA and BSAI for 2014/15.

Meeting Number: 579 324 701.

Meeting Password: cod123.

To join the online meeting (now from mobile devices!)

1. Go to *https://akfsc.webex.com/akfsc/j.php?ED=225073312&UID=1393421722&PW=NOGI0NzlkNDky&RT=MiM0*

2. If requested, enter your name and email address.

3. If a password is required, enter the meeting password: cod123

4. Click ''Join''.

To join the audio conference only

Teleconference number: 1–877–953–5415.

Participant: 1709502.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, (907) 271–2809, at least 5 working days prior to the meeting date.

Dated: April 23, 2013.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2013–09957 Filed 4–26–13; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Meeting of Technology Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces a public meeting of the CFTC Technology Advisory Committee (TAC) on Tuesday, April 30, 2013, at the CFTC's Washington, DC, headquarters from 10:00 a.m. to 4:00 p.m. The TAC will focus on issues related to swap data reporting, and will also receive updates on the industry-led technology effort to improve customer protections, as well as new requirements imposed by the Commission's regulations.

DATES: The meeting will be held on April 30, 2013. Members of the public who wish to submit written statements in connection with the meeting should submit them by April 29, 2013.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Written statements should be submitted to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, Attention: Office of the Secretary. Statements may also be submitted by electronic mail to: *secretary@cftc.gov.* Please use the title ''Technology Advisory Committee'' in any written statement you may submit. Any statements submitted in connection with the committee meeting will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Ali Hosseini, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–6144.

SUPPLEMENTARY INFORMATION: The CFTC Technology Advisory Committee will hold a public meeting on Tuesday, April 30, 2013, from 10:00 a.m. to 4:00 p.m. at the CFTC's Washington, DC, headquarters. The meeting will focus primarily on issues related to swap data reporting. It will also include updates on the implementation of an industry-led technology solution to protect customer funds, and compliance with certain requirements imposed under Part 1 of the Commission's regulations (17 CFR part 1). These matters are of pressing importance to the public interest and to the CFTC's execution of its statutory duties under the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* Therefore, this meeting is being announced with less than the 15 calendar days' notice provided for by 41 CFR 102–3.150(b).

The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public who wish to listen to the meeting by telephone may do so by calling the toll-free telephone number listed in this Notice to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation. After the meeting, a transcript of the meeting will be published on the CFTC's Web site, *www.cftc.gov.*

Members of the public who submit statements in connection with the meeting should be aware that all written submissions provided to the CFTC in any form will also be published on the CFTC Web site.

The telephone call-in information for the live, listen-only audio feed of the meeting is as follows:

Domestic Toll Free: 1–866–844–9416.

International Toll: To be posted on the CFTC Web site, *www.cftc.gov,* on the page for this meeting, under Related Documents.

Call Leader Name: Gian Robinson (1–202–418–5409).

Pass Code/Pin Code: CFTC.

Authority: 5 U.S.C. Appendix, Federal Advisory Committee Act, Sec. 10(a)(2).

Dated: April 23, 2013.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2013–09980 Filed 4–26–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0088]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense (Personnel and Readiness) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 28, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Federal Voting Assistance Program ATTN: Mr. David Beirne, 4800 Mark Center Drive, Suite 03J25 Alexandria, VA 22350, or call at (571) 372–0740.

Title, Associated Form, and OMB Control Number: The 2013 FVAP Ethnographies, Focus Groups, and Surveys; OMB Control Number 0704–TBD.

Needs and Uses: The primary objective of the set of information collections referred to as the 2013 FVAP Ethnographies, Focus Groups, and Surveys, conducted on behalf of the Federal Voting Assistance Program (FVAP), an agency of the Department of Defense, is to examine the attitudes, experiences, and behaviors of a number of actors involved in the absentee voting process as it pertains to CONUS and OCONUS military voters and overseas voters covered under the Uniformed and Overseas Civilian Absentee Voting Act (UOCAVA). This research will explore potential deficiencies, risks, and pitfalls which serve as barriers to voting success among these UOCAVA voters. The data obtained through this study will provide an assessment of potential changes to address current barriers to UOCAVA voting.

Specifically, this effort will be comprised of the following research components:

• 39 ethnographies among non-military and non-U.S. government individuals;

• 48 ethnographies with Local Election Officials;

• 28 ethnographies among spouses/adult children of active duty U.S. military service members;

• 24 focus groups among non military UOCAVA voters;

• 8 focus groups among military spouses/adult children;

• 4 focus groups among non military non voters;

• Survey of 4,000 non military UOCAVA voters;

• 2 final focus groups among military spouses/adult children.

Affected Public: Non-military UOCAVA voters including military spouses and adult children, non-military and non-U.S. government individuals, and Local Election Officials.

Annual Burden Hours: 2,323 hours total. Time estimates by research methodology as follows:

- 39 ethnographies among non-military and non-U.S. government individuals: 78 hours (2 hours per respondent)
- 48 ethnographies with Local Election Officials: 96 hours (2 hours per respondent)
- 28 ethnographies among spouses/adult children of active duty U.S. military service members: 56 hours (2 hours per respondent)
- 24 focus groups among non military UOCAVA voters: 480 hours (2 hours per respondent; 10 respondents per group; 240 respondents)
- 8 focus groups among military spouses/adult children: 160 hours (2 hours per respondent; 10 respondents per group; 80 respondents)
- 4 focus groups among non military non voters: 80 hours (2 hours per respondent; 10 respondents per group; 40 respondents)
- Survey of 4,000 non military UOCAVA voters: 1,333 hours (20 minutes per respondent)
- 2 final focus groups among military spouses/adult children: 40 hours (2 hours per respondent; 10 respondents per group; 20 respondents)

Number of Respondents: 4,495.

Responses per Respondent: 1.

Average Burden per Response: Ethnographies and Focus Groups: 2 hours each. Survey: 20 minutes.

Frequency: One time.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires the States to allow Uniformed Services personnel, their family members, and overseas citizens to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal offices. The Act covers members of the Uniformed Services and the merchant marine to include the commissioned corps of the National Oceanic and Atmospheric Administration and Public Health Service and their eligible dependents, Federal civilian employees overseas, and overseas U.S. citizens not affiliated with the Federal Government. Local Election Officials (LEO) process voter registration and absentee ballot applications, send absentee ballots to voters, and receive and process the voted ballots in counties, cities, parishes, townships and other jurisdictions within the U.S. LEOs, independently and in relation to their respective State election officials, are often one of the most important pieces in the absentee voting process for UOCAVA citizens. The 2013 FVAP Ethnographies, Focus Groups, and Surveys research project will examine attitudes, experiences, and behaviors of LEOs and UOCAVA voters around the UOCAVA voting process. The research will explore the deficiencies, risks, and pifalls that serve as key barriers to UOCAVA voting success and will provide insights and recommendations for potential changes to address obstacles in the UOCAVA voting process. The study involves both qualitative and quantitative data collection methods. The research findings will be used for overall rogram evaluation, management and improvement.

Dated: April 15, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–10027 Filed 4–26–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Program for Construction, Renovation, Repair or Expansion of Public Schools Located on Military Installations

AGENCY: Office of Economic Adjustment (OEA), Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Secretary of Defense was previously authorized to establish a limited program to construct, renovate, repair, or expand elementary and

secondary public schools on military installations in order to address capacity or facility condition deficiencies at such schools. Pursuant to Section 8108 of Public Law 113–6, the Consolidated and Further Continuing Appropriations Act, 2013, Congress made available an additional $270 million for the program and added a new eligibility criterion. This notice explains the additional criterion and the procedures for the DoD program, administered by OEA, to distribute the $270 million.

DATES: Not applicable. Funds will be distributed until exhausted, as described in the **Federal Register** notice dated September 9, 2011 (76 FR 55883–55886) and this notice.

ADDRESSES: Not applicable. Appropriate information will be provided directly to invited applicants.

FOR FURTHER INFORMATION CONTACT: David F. Witschi, Associate Director, OEA, *telephone:* (703) 697–2130, *email: david.witschi@wso.whs.mil.*

SUPPLEMENTARY INFORMATION: Please refer to the *Federal Funding Opportunity Title:* Department of Defense Program for Construction, Renovation, Repair or Expansion of Public Schools Located on Military Installations.

Announcement Type: Federal Funding Opportunity.

Catalog of Federal Domestic Assistance (CFDA) Number: 12.600.

Date: September 9, 2011.

The Secretary of Defense is authorized by Section 8108 of Public Law 113–6, the Consolidated and Further Continuing Appropriations Act, 2013, and is choosing to act through OEA, to provide up to $270 million ''to make grants, conclude cooperative agreements, or supplement other Federal funds to construct, renovate, repair, or expand elementary and secondary public schools on military installations in order to address capacity or facility condition deficiencies at such schools: Provided further, that in making such funds available, OEA shall give priority consideration to those military installations with schools having the most serious capacity or facility condition deficiencies as determined by the Secretary of Defense: Provided further, that funds may not be made available for a school unless its enrollment of Department of Defense-connected children is greater than 50 percent.

Section 8109 of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, and Section 8118 of Public Law 112–74, the Consolidated Appropriations Act, 2012, previously provided a total of $500 million to construct, renovate, repair, or expand elementary and secondary public schools on military installations. OEA announced procedures for administering this program in a **Federal Register** notice dated September 9, 2011 (76 FR 55883–55886). This notice explains an additional project eligibility criterion applicable to the additional $270 million provided by Congress pursuant to Section 8108 of Public Law 113–6.

1. Additional Eligibility Criteria applicable to the $270 million provided by Section 8108 of Public Law 113–6:

a. Funds may not be made available to a school unless its enrollment of defense-connected children is greater than 50%.

b. For the purposes of this program, the term ''Defense-connected children'' is defined as children of a uniformed Military Service member, and children who have a parent who is both a civilian and works on a military installation.

c. The determination of compliance with this criterion will be based on Fiscal Year 2012 school enrollment data reported to the U.S. Department of Education by May 1, 2013.

2. The additional criterion described above is not applicable to funding previously provided under Section 8109 of Public Law 112–10, the Department of Defense and Full-Year Continuing Appropriations Act, 2011, or Section 8118 of Public Law 112–74, the Consolidated Appropriations Act, 2012.

3. All other information announced in the September 9, 2011 notice, including proposal and application submission information, remains unchanged.

4. Agency Contacts.

For further information, to answer questions regarding this notice, or for help with problems, contact: David F. Witschi, OEA Associate Director, *telephone:* (703) 697–2130, *email: david.witschi@wso.whs.mil* or regular mail at 2231 Crystal Drive, Suite 520, Arlington, VA 22202–3711.

5. Other Information.

The OMB Control Number for information collection related to this notice is 0790–0006; expires July 31, 2015.

The OEA Internet address is *http://www.oea.gov.*

Dated: April 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–10031 Filed 4–26–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of Inland Waterways Users Board.

SUMMARY: Under the provisions of 10 U.S.C. 2166(e), the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense (DoD) gives notice that it is renewing the charter for the Inland Waterways Users Board (''the Board'').

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall provide the Secretary of Defense, through the Secretary of the Army and the Assistant Secretary of the Army for Civil Works, independent advice and recommendations on matters relating to construction and rehabilitation priorities and spending levels on the commercial navigation features and components of the U.S. inland waterways and inland harbors.

The Board shall report to the Secretary of Defense through the Secretary of the Army, the Assistant Secretary of the Army for Civil Works, and the U.S. Army Corps of Engineers. The Secretary of the Army, pursuant to DoD policy, may act upon the Board's advice and recommendations. Board members, as determined by the DoD, shall be representative members and, pursuant to 33 U.S.C. 2251(a), the Board shall be composed of eleven members.

Based upon the Secretary of the Army's recommendation, the Secretary of Defense shall invite primary commercial users and shippers of the inland and intracoastal waterways to serve on the Board. Commercial users and shippers invited to serve on the Board shall designate an individual, subject to Secretary of Defense approval, to represent the organization's interests.

The Department, when considering prospective users and shippers to be represented on the Board, shall ensure selections represent various regions of the country and a spectrum of the primary users and shippers utilizing the inland and intracoastal waterways for commercial purposes. Due consideration shall be given to assure a balance among the members based on the ton-mile shipments of the various

categories of commodities shipped on inland and intracoastal waterways.

A primary user or shipper may be represented on the Board, at the request of the Secretary of the Army and with the approval of the Secretary of Defense, for a two-year term of service. A user or shipper may be represented on the Board no more than two terms of service (four years), without prior approval of the Secretary of Defense. A user or shipper may be subsequently represented on the Board, but only after being off the Board for at least two years.

In addition to the primary users and shippers invited by the Secretary of Defense, the Secretary of the Army shall designate, and the Secretaries of Agriculture, Transportation and Commerce may each designate, a representative to act as an observer of the Board. These observers, who have no voting rights, shall each be a full-time or permanent part-time employee of his or her respective agency.

Pursuant to 33 U.S.C. 2251(a), the Secretary of the Army shall designate one Board member to serve as the Board's Chairperson. With the exception of travel and per diem for official travel, all Board members shall serve without compensation.

The Department, when necessary and consistent with the Board's mission and DoD policies and procedures, may establish subcommittees, task groups, or working groups to support the Board. Establishment of subcommittees will be based upon a written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Secretary of the Army. Currently, the Board does not use subcommittees. If the Department determines that the establishment of subcommittees is warranted, the Board's charter must be amended prior to such establishment.

The Board shall meet at the call of the Board's Designated Federal Officer (DFO), in consultation with the Chairperson. Pursuant to 33 U.S.C. 2251(b), the Board shall meet at least semi-annually.

In addition, the DFO is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the DFO, the Alternate DFO shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board.

All written statements shall be submitted to the DFO, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board's DFO can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The DFO, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board. The DFO, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: April 23, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–09972 Filed 4–26–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, May 16, 2013; 6:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Rachel Blumenfeld, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks Taken As Appropriate

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Rachel Blumenfeld as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Rachel Blumenfeld at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Rachel Blumenfeld at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2013Meetings.html.*

Issued at Washington, DC, on April 23, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–10035 Filed 4–26–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board (STEAB)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice announces a teleconference call of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. 92–463; 86 Stat.770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 16, 2013, from 3:30 p.m. to 4:00 p.m. (EDT). To receive the call-in number and passcode, please contact the Board's Designated Federal Officer (DFO) at the address or phone number listed below.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, STEAB Designated Federal Officer, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, 1000 Independence Ave. SW., Washington, DC 20585. Phone number is (202) 287–1644.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for the Office of Energy Efficiency and Renewable Energy regarding goals and objectives, programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. 101–440).

Tentative Agenda: Receive an update on the activities of the STEAB's Taskforces, provide an update to the Board on routine business matters and other topics of interest, and work on agenda items and details for the June 2013 meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Gil Sperling at the address or telephone number listed above. Requests to make oral comments must be received five days prior to the meeting; reasonable provision will be made to include requested topic(s) on the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days on the STEAB Web site at: *www.steab.org.*

Issued at Washington, DC, on April 23, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–10034 Filed 4–26–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: The EIA has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of Form FE–746R, ''Natural Gas Imports and Exports,'' OMB Control Number 1901–0294. The proposed collection will support DOE's Office of Fossil Energy (FE) in the collection of critical information on U.S. natural gas trade. Data collected include name of importer/exporter; country of origin/destination; international point of entry/exit; name of supplier; volume; price; transporters; U.S. geographic market(s) served; and duration of supply contract on a monthly basis. The data, published in *Natural Gas Imports and Exports,* are used to monitor North American gas trade, and to support various market and regulatory analyses performed by FE.

DATES: Comments regarding this proposed information collection must be received on or before May 29, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503.

And to:

Lisa Tracy, U.S. Department of Energy, Office of Fossil Energy, Office of Natural Gas Regulatory Activities (FE–34), P.O. Box 44375, Washington, DC 20026–4375, Phone: (202) 586–4523, Fax: (202) 586–6050.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lisa Tracy at the contact information above. Alternatively, Ms. Tracy may be emailed at *lisa.tracy@hq.doe.gov*. Copies of the information collection instruments and instructions can also be viewed at *http://www.fe.doe.gov/programs/gasregulation/report_guidelines.html*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.:* 1901–0294; (2) *Information Collection Request Title:* Natural Gas Imports and Exports; (3) *Type of Request:* Three-Year Extension; (4) *Purpose:* The Federal Energy Administration Act of 1974 (15 U.S.C. 761 et seq.) and the DOE Organization Act (42 U.S.C. 7101 et seq.) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands. The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA.

DOE's Office of Fossil Energy (FE) is delegated the authority to regulate natural gas imports and exports under section 3 of the Natural Gas Act of 1938, 15 U.S.C. 717b. In order to carry out its delegated responsibility, FE requires those persons seeking to import or export natural gas to file an application providing basic information on the scope and nature of the proposed import/export activity. Once an importer or exporter receives authorization from FE, they are required to submit monthly reports of all import and export transactions. Form FE–746R collects critical information on U.S. natural gas trade including: name of importer/exporter; country of origin/destination; international point of entry/exit; name of supplier; volume; price; transporters; U.S. geographic market(s) served; and duration of supply contract on a monthly basis. The data, published in *Natural Gas Imports and Exports,* are used to ensure compliance with the terms and conditions of the authorizations. In addition, the data are used to monitor North American gas trade, which, in turn, enables the Federal government to perform market and regulatory analyses; improve the capability of industry and the government to respond to any future energy-related supply problems; and keep the general public informed of

international natural gas trade. Responses to EIA's information collection are required by 15 U.S.C. 772(b); (5) *Annual Estimated Number of Respondents:* 326; (6) *Annual Estimated Number of Total Responses:* 4,099; (7) *Annual Estimated Number of Burden Hours:* 12,978; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $0; FE estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Public Law 93–275, codified at 15 U.S.C. 772(b) and Section 3 of the Natural Gas Act of 1938, codified at 15 U.S.C. 717(b).

Issued in Washington, DC, on April 23, 2013.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2013–10028 Filed 4–26–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI13–5–000]

Girard Gurgick; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI13–5–000.

c. *Date Filed:* April 1, 2013.

d. *Applicant:* Girard Gurgick.

e. *Name of Project:* Goose Creek Hydropower Project.

f. *Location:* The proposed Goose Creek Hydropower Project will be located on Goose Creek, at the Goose Creek Dam, in the town of Leesburg, Loudoun County, Virginia.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Girard Gurgick, 43883 Stronghold Court, Ashburn, VA 20147 telephone: (703) 302–9944; email: *GGurgick@GSquaredEM.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Ashish Desai, (202) 502–8370, or Email address: *Ashish.Desai@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions is:* 30 days from the issuance of this notice by the Commission.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI13–5–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Goose Creek Hydropower Project will consist of: (1) An existing 27-foot-high, concrete dam; (2) an Archimedes screw turbine with an installed capacity of 496 kilowatts and a design head of 20 feet; (3) a transmission line connected to a net metering location at the Goose Creek Water Treatment Plant operated by the City of Fairfax; and (4) appurtenant facilities. The power generated will be used by the City of Fairfax to drive the water pumps at their water treatment plant. The city currently uses electricity provided by Dominion Virginia Power through its power grid.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the Docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOlineSupport@ferc.gov* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: April 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09984 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–160–000]

Northwest Pipeline GP; Notice of Application

Take notice that on April 12, 2013, Northwest Pipeline GP (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in the above referenced docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting a certificate of public convenience and necessity authorizing Northwest to construct and operate the Blue Water Liquefied Natural Gas (LNG) Meter Station and associated appurtenances at Benton County, Washington. The Blue Water LNG Meter Station will include three meters, associated valves and piping, and miscellaneous appurtenance, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Pam Barnes, Project Manager, 295 Chipeta Way, Salt Lake City, Utah 84108, at (801) 584–6857.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 13, 2013.

Dated: April 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09988 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13570–002]

Warmsprings Irrigation District; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Application for New License for a Major Water Project 5 Megawatts or Less—Existing Dam.

b. *Project No.:* 13570–002.

c. *Date filed:* April 15, 2013.

d. *Applicant:* Warmsprings Irrigation District.

e. *Name of Project:* Warm Springs Dam Hydroelectric Project.

f. *Location:* On the Malheur River, near the Town of Juntura, Malheur County, Oregon. The project would utilize the existing Warm Springs dam and reservoir, which is owned by the U.S. Bureau of Reclamation and would occupy 13.5 acres of land administered by the U.S Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Randy Kinney, Warmsprings Irrigation District, 334 Main Street North, Vale, OR 97918, (541) 473–3951.

i. *FERC Contact:* Kelly Wolcott; phone: (202) 502–6480; email: *kelly.wolcott@ferc.gov*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* June 14, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing U.S. Bureau of Reclamation's Warm Springs dam and reservoir, and would consist of the following new facilities: (1) An 8-foot-diameter, 32-foot-long cylindrical intake; (2) a 190-foot-long, 8-foot-diameter steel penstock; (3) a powerhouse containing one 2.7-megawatt Francis or Kaplan turbine; (4) a 2.2-mile-long, 25-kilovolt (kV) transmission line; and (5) appurtenant facilities. The average annual generation is estimated to be 7.442 gigawatt-hours.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Oregon State Historic Preservation Officer (SHPO), as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Adequacy or Deficiency Letter (if needed)	June 2013.
Issue Acceptance Letter	August 2013.
Issue Scoping Document 1 for Comments	September 2013.
Comments on Scoping Document 1	October 2013.
Issue Scoping Document 2	December 2013.
Issue notice of ready for environmental analysis	December 2013.
Issue draft Environmental Assessment (EA)	June 2014.
Comments on draft EA	July 2014.
Issue final EA	October 2014.

Dated: April 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09981 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–125–000]

Columbia Gas Transmission, LLC; Notice of Application

Take notice that on April 5, 2013, Columbia Gas Transmission, LLC (Columbia), 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed an application pursuant to section 7(c) of the Natural Gas Act to construct approximately 12.6 miles of 8-inch diameter looping pipeline connected to its existing transmission system and appurtenant facilities in Summers and Monroe Counties, West Virginia and Giles County, Virginia to provide transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Fredric J. George, Lead Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 25325–1273, or call 304–357–2359, or fax 304–357–3206, or by email *fgeorge@nisource.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final

environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: May 10, 2013.

Dated: April 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09983 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–474]

South Carolina Electric & Gas Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project No:* 516–474.

c. *Date Filed:* November 29, 2012 and March 19, 2013.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda Hydroelectric Project.

f. *Location:* The project is located on the Saluda River in Lexington, Newberry, Richland, and Saluda counties, South Carolina. The proposed action would occur on Lake Murray in Lexington County, South Carolina.

g. *Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Tommy Boozer, Manager, Lake Management Programs, South Carolina Electric & Gas Company, 6248 Bush River Road, Columbia, SC 29212, telephone 803–217–9007.

i. *FERC Contact:* Mr. Lorance Yates at 678–245–3084 or email: *lorance.yates@ferc.gov.*

j. *Deadline for filing comments and/or motions:* May 20, 2013.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–516–474) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* South Carolina Electric and Gas Company proposes to permit Lake Murray Docks, Inc./Windward Point Yacht Club to use project waters to expand an existing boat dock facility through the addition of an 8-slip floating dock to accommodate a maximum of 12 additional boats. The proposed new structures would be for the private use of members of the Windward Point Yacht Club. The new work would consist of attaching the proposed addition to the existing floating facility.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits

(P–516) in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09989 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–90–000

Applicants: JPM Capital Corporation

Description: Supplement to April 11, 2013 Section 203 Application for Disposition of Jurisdictional Facilities, et. al. of JPM Capital Corporation.

Filed Date: 4/19/13

Accession Number: 20130419–5083

Comments Due: 5 p.m. ET 4/29/13

Docket Numbers: EC13–95–000

Applicants: AP Holdings, LLC, EDF Trading North America, LLC

Description: Joint Application for Authorization Under Section 203 of the FPA, Request for Expedited Action, and Request for Confidential Treatment of AP Holdings, LLC and EDF Trading North America, LLC.

Filed Date: 4/19/13

Accession Number: 20130419–5088

Comments Due: 5 p.m. ET 5/10/13

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–28–000

Applicants: CCI Roseton LLC

Description: Self-Certification of EWG Status of CCI Roseton LLC.

Filed Date: 4/18/13

Accession Number: 20130418–5223

Comments Due: 5 p.m. ET 5/9/13

Docket Numbers: EG13–29–000

Applicants: Imperial Valley Solar 1, LLC

Description: Imperial Valley Solar 1, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 4/19/13

Accession Number: 20130419–5116

Comments Due: 5 p.m. ET 5/10/13

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1306–000

Applicants: Haverhill Coke Company LLC

Description: Tariff Cancellation of Haverhill Coke Company LLC to be effective 4/19/2013.

Filed Date: 4/18/13

Accession Number: 20130418–5186

Comments Due: 5 p.m. ET 5/9/13

Docket Numbers: ER13–1307–000

Applicants: Middletown Coke Company, LLC

Description: Middletown Coke Company, LLC Cancellation of Tariff to be effective 4/19/2013.

Filed Date: 4/18/13

Accession Number: 20130418–5193

Comments Due: 5 p.m. ET 5/9/13

Docket Numbers: ER13–1308–000

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits Notice of Cancellation of Interconnection Service Agreement No. 1382.

Filed Date: 4/18/13

Accession Number: 20130418–5232

Comments Due: 5 p.m. ET 5/9/13

Docket Numbers: ER13–1309–000

Applicants: Carolina Power & Light Company

Description: Revised OATT Attachment H of Carolina Power and Light to be effective 7/1/2012.

Filed Date: 4/19/13

Accession Number: 20130419–5048

Comments Due: 5 p.m. ET 5/10/13

Docket Numbers: ER13–1310–000

Applicants: Florida Power Corporation

Description: Revised OATT Attachment H of Florida Power Corporation to be effective 7/1/2012.

Filed Date: 4/19/13

Accession Number: 20130419–5049

Comments Due: 5 p.m. ET 5/10/13

Docket Numbers: ER13–1311–000

Applicants: Duke Energy Carolinas, LLC

Description: Joint OATT Progress Depreciation to be effective 7/2/2012.

Filed Date: 4/19/13

Accession Number: 20130419–5050

Comments Due: 5 p.m. ET 5/10/13

Docket Numbers: ER13–1312–000

Applicants: Massachusetts Electric Company

Description: Interconnection Agreement Between Massachusetts Electric Co. and Seaman Energy to be effective 6/19/2013.

Filed Date: 4/19/13

Accession Number: 20130419–5113

Comments Due: 5 p.m. ET 5/10/13

Docket Numbers: ER13–1313–000

Applicants: Carolina Power & Light Company

Description: Carolina Power & Light Company submits Application for Revised Depreciation Rates for Power Supply and Coordination Agreement.

Filed Date: 4/19/13

Accession Number: 20130419–5174

Comments Due: 5 p.m. ET 5/10/13

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–53–009; OA08–100–006

Applicants: Carolina Power & Light Company, Florida Power Corporation

Description: Informational Filing of Operational Penalty Assessments and

Distributions of Duke Energy Carolinas, LLC, et al., as Required by Order Nos. 890 and 890–A in OA08–100, et al.

Filed Date: 4/19/13

Accession Number: 20130419–5084

Comments Due: 5 p.m. ET 5/10/13

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 19, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–09971 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP13–127–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P.'s Abbreviated Application for Order Authorizing Abandonment of Service.

Filed Date: 4/9/13.

Accession Number: 20130409–5079.

Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: CP13–165–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. Abbreviated Application for Order Authorizing Abandonment of Service of Equitrans, L.P.

Filed Date: 4/12/13.

Accession Number: 20130412–5172.

Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: CP13–138–000.

Applicants: Equitrans, L.P.

Description: Abbreviated Application for Certificate of Public Convenience and Necessity to Lease Pipeline Facilities and for Related Authorizations.

Filed Date: 4/10/13.

Accession Number: 20130410–5117.

Comments Due: 5 p.m. ET 5/10/13.

Docket Numbers: CP13–139–000.

Applicants: Peoples Natural Gas Company LLC and Rager Mountain Storage Company LLC.

Description: Abbreviated Joint Application of Peoples Natural Gas Company LLC and Rager Mountain Storage Company LLC to abandon pipeline facility by transfer and amending certificated of public convenience and necessity.

Filed Date: 4/10/13.

Accession Number: 20130410–5123.

Comments Due: 5 p.m. ET 5/10/13.

Docket Numbers: RP13–670–000.

Applicants: Trunkline LNG Company LLC.

Description: Trunkline LNG Company LLC submits a compliance filing.

Filed Date: 3/1/13.

Accession Number: 20130304–0202.

Comments Due: 5 p.m. ET 4/26/13.

Docket Numbers: RP13–799–000.

Applicants: Iroquois Gas Transmission System, L.P.

Description: 04/17/12 Negotiated Rates—United Energy Trading, LLC (HUB) 5095–89 to be effective 5/1/2013.

Filed Date: 4/17/13.

Accession Number: 20130417–5035.

Comments Due: 5 p.m. ET 4/29/13.

Docket Numbers: RP13–802–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: Non-Conforming TSAs and Minor Housekeeping to be effective 5/20/2013.

Filed Date: 4/19/13.

Accession Number: 20130419–5167.

Comments Due: 5 p.m. ET 5/1/13.

Docket Numbers: RP13–803–000.

Applicants: Northern Natural Gas Company.

Description: 20130419 Negotiated Rate to be effective 4/20/2013.

Filed Date: 4/19/13.

Accession Number: 20130419–5188.

Comments Due: 5 p.m. ET 5/1/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–665–001.

Applicants: Columbia Gulf Transmission, LLC.

Description: TRA Supplemental Compliance Filing.

Filed Date: 4/17/13.

Accession Number: 20130417–5193.

Comments Due: 5 p.m. ET 4/29/13.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–09968 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3777–001; ER10–2042–009; ER10–1938–004; ER10–1937–002; ER10–1898–003; ER10–1934–003; ER10–1893–003 ER10–1867–002; ER10–1862–003.

Applicants: Calpine Oneta Power, LLC, Calpine Energy Services, L.P., Calpine Power America—CA, LLC, Calpine Power America—OR, LLC, CES Marketing V, L.P., CES Marketing IX, LLC, CES Marketing X, LLC, PCF2, LLC, Power Contract Financing, L.L.C.

Description: Supplement to December 31, 2012 Updated Market Power Analysis of Calpine Oneta Power, LLC, et. al. for the Southwest Power Pool, Inc. Region.

Filed Date: 4/17/13.

Accession Number: 20130417–5207.

Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: ER13–1304–000.

Applicants: Unitil Power Corp.

Description: Unitil Power Corp submits Statement of all billing transactions under the Amended Unitil System Agreement for the period January 1, 2012 to December 31, 2012 etc.

Filed Date: 4/18/13.

Accession Number: 20130418–5092.
Comments Due: 5 p.m. ET 5/9/13.

Docket Numbers: ER13–1305–000.
Applicants: Southeastern Power Administration.
Description: Southeastern Power Administration submits request for waiver to the new one year notice rollover requirement provision and continuation of point to point transmission service.
Filed Date: 4/18/13.
Accession Number: 20130418–5095.
Comments Due: 5 p.m. ET 5/9/13.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA13–1–000.
Applicants: Virginia Electric and Power Company, Dominion Energy Marketing, Inc., Dominion Nuclear Connecticut, Inc., Dominion Energy Kewaunee, Inc., Dominion Energy Brayton Point, Inc., Dominion Energy Manchester Street, Inc., Dominion Retail, Inc., Elwood Energy, LLC, Fairless Energy, LLC, NedPower Mt. Storm, LLC, Kincaid Generation, LLC, Fowler Rider Wind Farm, LLC.
Description: Quarterly Land Acquisition Report of Dominion Resource Services, Inc.
Filed Date: 4/18/13.
Accession Number: 20130418–5100.
Comments Due: 5 p.m. ET 5/9/13.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–52–005; ER08–28–003.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits its annual compliance report on penalty assessments and distributions.
Filed Date: 4/18/13.
Accession Number: 20130418–5141.
Comments Due: 5 p.m. ET 5/9/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 18, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–09970 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–93–000.
Applicants: Ameren Energy Generating Company, AmerenEnergy Resources Generating Company, Ameren Energy Marketing Company, Electric Energy, Inc., Midwest Electric Power, Inc., AmerenEnergy Medina Valley Cogen, L.L.C., Dynegy Inc.
Description: Joint Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited Consideration of Ameren Energy Generating Company, et al.
Filed Date: 4/16/13.
Accession Number: 20130416–5219.
Comments Due: 5 p.m. ET 6/17/13.

Docket Numbers: EC13–94–000.
Applicants: NewPage Public Utilities, Franklin Resources, Inc.
Description: Joint Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited Consideration of NewPage Public Utilities, and Franklin Resources, Inc.
Filed Date: 4/16/13.
Accession Number: 20130416–5221.
Comments Due: 5 p.m. ET 5/7/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2488–005; ER12–1931–002; ER10–2504–003; ER12–610–003; ER12–2627–001; ER13–338–001.
Applicants: Shiloh Wind Project 2, LLC, Pacific Wind Lessee, LLC, Oasis Power Partners, LLC, Catalina Solar, LLC, Shiloh III Lessee, LLC, Shiloh IV Lessee, LLC.
Description: Supplement to December 31, 2012 Triennial Market Power Analysis Update of the EDF Renewable Energy Inc. Southwest Region Companies.
Filed Date: 3/19/13.
Accession Number: 20130319–5069.
Comments Due: 5 p.m. ET 5/9/13.

Docket Numbers: ER10–2794–010; ER10–2849–009; ER11–2028–010; ER12–1825–008.
Applicants: EDF Trading North America, LLC, EDF Industrial Power Services (NY), LLC, EDF Industrial Power Services (IL), LLC, EDF Industrial Power Services (CA), LLC.
Description: Supplement to January 8, 2013 Updated Market Power Analysis for the Southwest Region of EDF Trading North America, LLC, et al.
Filed Date: 3/21/13.
Accession Number: 20130321–5007.
Comments Due: 5 p.m. ET 5/9/13.

Docket Numbers: ER10–2331–019; ER10–2343–019; ER10–2319–018; ER10–2320–018; ER10–2317–017; ER10–2322–019; ER10–2324–018; ER10–2325–017; ER10–2332–018; ER10–2326–019; ER10–2327–020; ER10–2328–018; ER11–4609–017; ER10–2330–019.
Applicants: J.P. Morgan Ventures Energy Corporation, J.P. Morgan Commodities Canada Corporation, BE Alabama LLC, BE Allegheny LLC, BE CA, BE Ironwood LLC, BE KJ LLC, BE Louisiana LLC, BE Rayle LLC, Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., Central Power & Lime LLC, Triton Power Michigan LLC, Utility Contract Funding, L.L.C.
Description: JPMorgan Sellers submit Notice of Non-Material Change in Status re: Wildcat I.
Filed Date: 4/16/13.
Accession Number: 20130416–5222.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ER10–3319–010; ER10–2964–003; ER11–2041–003; ER11–2042–003; ER10–3193–002.
Applicants: Brooklyn Navy Yard Cogeneration Partners, L.P., Astoria Energy II LLC, Selkirk Cogen Partners, L.P., Innovative Energy Systems, LLC, Seneca Energy II, LLC.
Description: Amendment to April 4, 2013 Notification of Non-material Change in Status of the NYISO Affiliates.
Filed Date: 4/17/13.
Accession Number: 20130417–5147.
Comments Due: 5 p.m. ET 5/1/13.

Docket Numbers: ER12–673–001; ER12–672–001; ER10–1908–002; ER10–1909–002; ER10–1910–002; ER10–1911–002; ER10–1533–003; ER10–2374–002; ER12–674–001; ER12–670–001.
Applicants: Brea Generation LLC, Brea Power II, LLC, Duquesne Conemaugh, LLC, Duquesne Keystone, LLC, Duquesne Light Company, Duquesne Power, LLC, Macquarie Energy LLC, Puget Sound Energy, Inc., Rhode Island Engine Genco LLC, Rhode Island LFG Genco, LLC.
Description: Notice of Non-Material Change in Status of Brea Generation LLC, et al.
Filed Date: 4/16/13.

Accession Number: 20130416–5231.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ER13–629–002.
Applicants: Public Service Company of Colorado.
Description: 2013–04–17–NSP–BNGR-Tran-to Load-542 to be effective 1/1/2013.
Filed Date: 4/17/13.
Accession Number: 20130417–5102.
Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: ER13–663–002.
Applicants: Public Service Company of Colorado.
Description: 2013–04–16–NSP–MDEU-Tran-to Load-541 to be effective 1/1/2013.
Filed Date: 4/16/13.
Accession Number: 20130416–5211.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ER13–1085–001.
Applicants: BE Alabama LLC.
Description: Amendment to revision to market-based rate schedule to be effective 4/17/2013.
Filed Date: 4/16/13.
Accession Number: 20130416–5206.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ER13–1086–001.
Applicants: BE Allegheny LLC.
Description: Amendment to revisions to market-based rate tariff to be effective 4/17/2013.
Filed Date: 4/16/13.
Accession Number: 20130416–5207.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ER13–1087–001.
Applicants: BE CA LLC.
Description: Amendment to revisions to market-based rate tariff to be effective 4/18/2013.
Filed Date: 4/17/13.
Accession Number: 20130417–5037.
Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: ER13–1089–001.
Applicants: BE Ironwood LLC.
Description: Amendment to revisions to market-based rate tariff to be effective 4/17/2013.
Filed Date: 4/16/13.
Accession Number: 20130416–5209.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ER13–1090–001.
Applicants: BE KJ LLC.
Description: Amendment to revisions to market-based rate tariff to be effective 4/18/2013.
Filed Date: 4/17/13.
Accession Number: 20130417–5041.
Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: ER13–1097–001.
Applicants: Central Power & Lime LLC.
Description: Amendment to revisions to market-based rate tariff to be effective 4/18/2013.
Filed Date: 4/17/13.
Accession Number: 20130417–5044.
Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: ER13–1098–001.
Applicants: BE Rayle LLC.
Description: Amendment to revisions to market-based rate tariff to be effective 4/18/2013.
Filed Date: 4/17/13.
Accession Number: 20130417–5137.
Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: ER13–1099–001.
Applicants: Triton Power Michigan LLC.
Description: Amendment to revisions to market-based rate tariff to be effective 4/18/2013.
Filed Date: 4/17/13.
Accession Number: 20130417–5146.
Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: ER13–1139–001.
Applicants: Imperial Valley Solar 1, LLC.
Description: Supplement to MBR Application to be effective 3/22/2013.
Filed Date: 4/17/13.
Accession Number: 20130417–5181.
Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: ER13–1296–001.
Applicants: Arizona Public Service Company.
Description: WesConnect Point-to-Point Regional Transmission Service Agreement to be effective 7/1/2013.
Filed Date: 4/16/13.
Accession Number: 20130416–5203.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ER13–1300–000.
Applicants: Tucson Electric Power Company.
Description: WestConnect Point-to-Point Regional Transmission Tariff to be effective 7/1/2013.
Filed Date: 4/16/13.
Accession Number: 20130416–5200.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ER13–1301–000.
Applicants: Southwest Power Pool, Inc.
Description: 1313R7 Oklahoma Gas and Electric Company NITSA and NOA to be effective 4/1/2013.
Filed Date: 4/16/13.
Accession Number: 20130416–5208.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ER13–1302–000.
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position No. V3–015—Original Service Agreement No. 3525 to be effective 4/3/2013.
Filed Date: 4/17/13.
Accession Number: 20130417–5042.
Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: ER13–1303–000.
Applicants: Utility Bid USA, LLC.
Description: Utility Bid USA, LLC Market Based Rate Tariff to be effective 5/15/2013.
Filed Date: 4/17/13.
Accession Number: 20130417–5149.
Comments Due: 5 p.m. ET 5/8/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–20–000.
Applicants: Southwest Power Pool, Inc.
Description: Application of Southwest Power Pool, Inc. Under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities.
Filed Date: 4/16/13.
Accession Number: 20130416–5220.
Comments Due: 5 p.m. ET 5/7/13.

Docket Numbers: ES13–21–000.
Applicants: DTE Electric Company.
Description: Application of DTE Electric Company for Authorization to Issue Short-term Debt Securities.
Filed Date: 4/17/13.
Accession Number: 20130417–5003.
Comments Due: 5 p.m. ET 5/8/13.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA07–37–006.
Applicants: Louisville Gas & Electric Company, Kentucky Utilities Company.
Description: Louisville Gas and Electric Company, et al. submits annual compliance report on unreserved use and late study penalty assessments and distributions.
Filed Date: 4/17/13.
Accession Number: 20130417–5101.
Comments Due: 5 p.m. ET 5/8/13.

Docket Numbers: OA07–54–011.
Applicants: PacifiCorp.
Description: PacifiCorp's annual informational filing on assessments and distributions of operational penalties.
Filed Date: 04/17/2013.
Accession Number: 20130417–5115.
Comment Date: 5 p.m. ET 5/8/13.

Docket Numbers: OA08–96–007.
Applicants: Southern Company Services, Inc.
Description: Southern Company Services, Inc. submits Report of Penalty Assessments and Distribution in accordance with Orders Nos. 890 and 890–A and Compliance Report.
Filed Date: 04/17/2013.
Accession Number: 20130417–5208.
Comment Date: 5 p.m. ET 5/8/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern

time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 18, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–09969 Filed 4–26–13; 8:45 am].

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF13–3–000]

Elba Liquefaction Company, L.L.C., Southern LNG Company, L.L.C., Elba Express Company, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Planned Elba Liquefaction Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Elba Liquefaction Project and EEC Modification Project (collectively referred to as the Elba Liquefaction Project) involving construction and operation of facilities in Georgia by Elba Liquefaction Company, LLC (ELC); Southern LNG Company, LLC (SLNG); and Elba Express Company, LLC (EEC, collectively referred to as ''Companies''). The Commission will use this EA in its decision-making process to determine whether the project is in the public interest.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input during the scoping process will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the scoping period will close on May 22, 2013.

You may submit comments in written form or verbally. Further details on how to submit written comments are provided in the Public Participation section of this notice. In lieu of or in addition to sending written comments, the Commission invites you to attend the public scoping meetings listed below.

Date and time	Location
Tuesday, May 7, 2013 7:00 pm EDT	Hart County Library, 150 Benson St., Hartwell, Georgia.
Thursday, May 9, 2013 7:00 pm EDT	The Chatham County, Savannah Metropolitan Planning Commission, 112 East State St., Savannah, GA.

This notice is being sent to the Commission's current environmental mailing list for the project. State and local government officials are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the Companies could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility on My Land? What Do I Need To Know?'' is available for viewing on the FERC Internet Web site (*www.ferc.gov*). This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Involvement of the U.S. Department of Energy

The FERC is the lead federal agency preparing the EA to satisfy the requirements of the National Environmental Policy Act (NEPA). The U.S. Department of Energy, Office of Fossil Energy (DOE) has agreed to participate as a cooperating agency in the preparation of the EA to satisfy its NEPA responsibilities.

Under section 3 of the Natural Gas Act of 1938, as amended (NGA), 15 USC 717b, DOE would authorize the export of natural gas, including liquefied natural gas (LNG), to countries with which the United States has not entered into a free trade agreement providing for national treatment for trade in natural gas, unless it finds that the proposed export will not be consistent with the public interest. For the Elba Liquefaction Project, the purpose and need for DOE action is to respond to SLNG's application filed with DOE on August 31, 2012 (FE Docket No. 12–100–LNG), seeking authorization to export up to 4 million tons per annum (equivalent to 0.5 billion cubic feet per day) of domestic natural gas as LNG for a 20-year period from its Elba Island Terminal near Savannah, Georgia, commencing the earlier of the date of first export or ten years from the date that the requested authorization is issued. DOE authorization of Southern LNG's application would allow the export of LNG to any country: (1) With which the United States does not have a free trade agreement requiring the national treatment for trade in natural gas; (2) that has, or in the future develops, the capacity to import LNG; and (3) with which trade is not prohibited by U.S. law or policy.

Summary of the Planned Project

ELC and SLNG are planning to construct natural gas liquefaction facilities to support the production and export of up to 350 million cubic feet of LNG per day (2.5 million tons per year) at the existing Elba LNG Terminal, in Chatham County, near Savannah, Georgia. The activities planned at the Elba Island Terminal include the installation of up to ten Movable Modular Liquefaction System units, a flare system, modifications to the terminal piping, modification and construction of various buildings, and truck transport of natural gas liquids. In addition, modifications to the non-jurisdictional electrical distribution facilities would be required to support the liquefaction facilities.

To facilitate the supply of natural gas to the Elba LNG Terminal for liquefaction, EEC is proposing to add compression along its existing Elba Express Pipeline in Georgia. These facilities would include the addition of up to 16,000 horsepower of compression at the existing Hartwell Compressor Station in Hart County, Georgia and the construction of a new 11,000-horsepower compressor station and about 1,000 feet of interconnecting pipeline in Jefferson County, Georgia.

A map depicting the general location of the project facilities is included in appendix 2.[1]

Land Requirements for Construction

Construction of the facilities associated with the Elba Liquefaction Project would occur primarily within the existing Elba Island LNG Terminal footprint located on the 860-acre Elba Island. The Companies may seek off-site areas for staging, warehouse yards, contractor offices, and parking, and would attempt to site those in areas that have been previously used for such activities.

EEC would require about 24.8 acres of land for the new Jefferson County Compressor Station, and it would install the additional compression at the Hartwell Compressor Station within the 8.8 acre existing facility footprint.

The EA Process

The NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity under section 7 of the NGA or grants authorization for the LNG facilities under section 3 of the NGA. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as scoping. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the planned project under these general headings:

- geology and soils;
- water resources, fisheries, and wetlands;
- vegetation, wildlife, and endangered and threatened species;
- socioeconomics;
- cultural resources;
- land use;
- cumulative impacts;
- air quality and noise; and
- public safety.

We will also evaluate reasonable alternatives to the planned project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact federal and state agencies to discuss their involvement in the scoping process and the preparation of the EA.

The EA will present our independent analysis of these issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the DOE, the U.S. Department of Transportation, and the U.S. Coast Guard are participating as cooperating agencies in the preparation of the EA.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Georgia State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects in consultation with the SHPO as the project develops. On natural gas facility projects, the Area of Potential Effects at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for the project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities, the environmental information provided by the Companies, and comments received by the public. This preliminary list of issues may be changed based on your comments and our analysis:

- construction and operational impacts on nearby residences in proximity to the existing and proposed compressor stations;
- impacts on forested land at the Jefferson County Compressor Station;
- impacts on air quality and noise from the new Jefferson County Compressor Station and the upgrades at the existing Hartwell Compressor Station; and
- impacts on aquatic species, including threatened and endangered species due to ballast water discharges at Elba Island.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project.

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''Us,'' ''we,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36 of the Code of Federal Regulations, Part 800. Historic properties are defined in those regulations as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before May 22, 2013. This is not your only public input opportunity; please refer to the Environmental Review Process flow chart in appendix 2.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (PF13–3–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

1. You can file your comments electronically by using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

2. You can file your comments electronically by using the eFiling feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

3. You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Indian tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version, or would like to remove your name from the mailing list, please return the attached Information Request (appendix 3).

Becoming an Intervenor

Once the Companies file their applications with the Commission, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-Filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives formal applications for the project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF13–3). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the text of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Finally, the Companies have established a Web site for this project at *http://www.kindermorgan.com/business/gas_pipelines/projects/elbaLNG/*. The Web site includes a project overview, environmental information, and information for affected stakeholders.

Dated: April 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09987 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 344–023]

Southern California Edison Company; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC's) regulations, 18 Code of Federal Regulations (CFR) part 380 (Order No. 486, 52 **Federal Register** 47897), the Office of Energy Projects has prepared a draft environmental assessment (EA) for an application filed by Southern California Edison Company (licensee) on September 28, 2010, requesting Commission approval to surrender the project license for the San Gorgonio Hydroelectric Power Project, located on the San Gorgonio and Whitewater rivers in San Bernardino and Riverside counties, California. Following surrender of the license, the licensee would transfer some of the project facilities to San Gorgonio Pass Water Agency, Banning Heights Mutual Water Company, and the City of Banning, California, to allow continuation of water deliveries to the local communities.

The draft EA evaluates the environmental effects that would result from approving the licensee's proposed surrender. The draft EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. A copy of the draft EA is on file with the Commission and is available for public inspection. The

draft EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–344) excluding the last three digits in the docket number field to access the document. You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

For further information, contact Rebecca Martin by telephone at 202–502–6012 or by email at *Rebecca.martin@ferc.gov*.

Dated: April 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09986 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–8–000]

Columbia Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Line MB Extension Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Line MB Extension Project, proposed by Columbia Gas Transmission, LLC (Columbia) in the above-referenced docket. Columbia requests authorization to construct and operate about 21.1 miles of 26-inch-diameter pipeline and appurtenant facilities in Baltimore and Harford Counties, Maryland.

The EA assesses the potential environmental effects of the construction and operation of the Line MB Extension Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Army Corps of Engineers (USACE) participated as a cooperating agency in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The USACE will adopt relevant sections of the EA, as appropriate, in its decision document.

The proposed Line MB Extension Project includes the following facilities:

- 21.1 miles of 26-inch-diameter pipeline;
- bi-directional pig launcher/receiver at the Owings Mills Metering and Regulation Station at milepost (MP) 0.0;
- 26-inch mainline valve at MP 7.9;
- 26-inch mainline valve at MP 16.1; and
- bi-directional pig launcher/receiver at the Rutledge Compressor Station at MP 21.1.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding.

In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before May 24, 2013.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP13–8–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket

[1] See the previous discussion on the methods for filing comments.

number excluding the last three digits in the Docket Number field (i.e., CP13–8). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: April 19, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09982 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Staff Attendance at Southwest Power Pool Regional Entity Trustee, Regional State Committee and Board of Directors Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meetings of the Southwest Power Pool, Inc. (SPP) Regional Entity Trustee (RE), Regional State Committee (RSC) and Board of Directors, as noted below. Their attendance is part of the Commission's ongoing outreach efforts.

All meetings will be held at the Hilton Kansas City Airport Hotel, 8801 NW 112th Street, Kansas City, MO 64153. The hotel's phone number is (816) 891–8900.

SPP RE
April 29, 2013 (8:00 a.m.–12:00 p.m.)
SPP RSC
April 29, 2013 (1:00 p.m.–5:00 p.m.)
SPP Board of Directors
April 30, 2013 (8:00 a.m.–3:00 p.m.)

The discussions may address matters at issue in the following proceedings:

Docket No. ER06–451, *Southwest Power Pool, Inc.*
Docket No. ER08–1419, *Southwest Power Pool, Inc.*
Docket No. ER09–659, *Southwest Power Pool, Inc.*
Docket No. ER11–4105, *Southwest Power Pool, Inc.*
Docket No. ER12–140, *Southwest Power Pool, Inc.*
Docket No. ER12–550, *Southwest Power Pool, Inc.*
Docket No. ER12–891, *Southwest Power Pool, Inc.*
Docket No. ER12–909, *Southwest Power Pool, Inc.*
Docket No. ER12–959, *Southwester Power Pool, Inc.*
Docket No. ER12–1017, *Southwest Power Pool, Inc.*
Docket No. ER12–1018, *Southwest Power Pool, Inc.*
Docket No. ER12–1179, *Southwest Power Pool, Inc.*
Docket No. ER12–1401, *Southwest Power Pool, Inc.*
Docket No. ER12–1402, *Southwest Power Pool, Inc.*
Docket No. ER12–1586, *Southwest Power Pool, Inc.*
Docket No. ER12–1772, *Southwest Power Pool, Inc.*
Docket No. ER12–1779, *Southwest Power Pool, Inc.*
Docket No. ER12–2292, *Southwest Power Pool, Inc.*
Docket No. ER12–2366, *Southwest Power Pool, Inc.*
Docket No. EL12–2, *Southwest Power Pool, Inc.*
Docket No. EL12–47, *Southwest Power Pool, Inc.*
Docket No. EL12–51, *Southwest Power Pool, Inc.*
Docket No. EL12–60, *Southwest Power Pool, Inc., et al.*
Docket No. ER12–1813, *The Empire District Electric Co.*
Docket No. ER12–1071, *Entergy Arkansas, Inc.*
Docket No. EL12–59, *Golden Spread Electric Cooperative, Inc.*
Docket No. ER09–548, *ITC Great Plains, LLC*
Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1577, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL11–34, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER09–36, *Prairie Wind Transmission, LLC*
Docket No. ER09–35, *Tallgrass Transmission, LLC*
Docket No. EL12–28, *Xcel Energy Services Inc., et al.*
Docket No. EL13–15, *Southwestern Public Service Company*
Docket No. EL13–35, *Southwestern Public Service Company*
Docket No. ER13–301, *Southwest Power Pool, Inc.*
Docket No. ER13–366, *Southwest Power Pool, Inc.*
Docket No. ER13–367, *Southwest Power Pool, Inc.*
Docket No. ER13–664, *Southwest Power Pool, Inc.*
Docket No. ER13–989, *Southwest Power Pool, Inc.*
Docket No. ER13–1013, *Southwest Power Pool, Inc.*
Docket No. ER13–1014, *Southwest Power Pool, Inc.*
Docket No, ER13–1032, *Southwest Power Pool, Inc.*
Docket No. ER13–1061, *Southwest Power Pool, Inc.*
Docket No. ER13–1068, *Southwest Power Pool, Inc.*
Docket No. ER13–1084, *Southwest Power Pool, Inc.*
Docket No. ER13–1173, *Southwest Power Pool, Inc.*
Docket No. ER13–1264, *Southwest Power Pool, Inc.*

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Dated: April 22, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–09985 Filed 4–26–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0091; FRL 9530–8]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Ambient Air Quality Surveillance (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''Nitrogen Oxides Ambient Air Monitoring (Renewal)'' (EPA ICR No. 2358.04, OMB Control No. 2060–0638) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through April 30, 2013. This ICR is being submitted to OMB concurrently with the renewal for the ''Ambient Air Quality Surveillance'' ICR (EPA ICR Number 0940.27, OMB Control Number 2060–0084). The

renewal for the Ambient Air Quality Surveillance ICR will incorporates the requirements and burden currently approved under the Nitrogen Oxides Ambient Monitoring ICR (OMB# 2060–0638, EPA ICR Number 2358.03) and the Sulfur Dioxides Ambient Monitoring ICR (OMB# 2060–0642, EPA ICR Number 2370.02). Public comments were previously requested via the **Federal Register** (78 FR 12052) on February 21, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before May 29, 2013.

ADDRESSES: Submit your comments, referencing Docket ID number EPA–HQ–OAR–2002–0091, to (1) EPA online using *www.regulations.gov* (our preferred method), by Email to *a-and-r-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Laurie Trinca, Air Quality Analysis Division (C304–06), Environmental Protection Agency; telephone number (919) 541–0520; fax number: 919–541–1903; email address: *trinca.laurie@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Abstract: This Information Collection Request (ICR) includes ambient air monitoring data and other supporting measurements reporting and recordkeeping activities associated with the 40 CFR part 58 Ambient Air Quality Surveillance rule. These data and information are collected by various State and local air quality management agencies, and Tribal entities and reported to the Office of Air Quality Planning and Standards within the Office of Air and Radiation, U.S. EPA.

The data collected through this information collection consist of ambient air concentration measurements for the seven air pollutants with National Ambient Air Quality Standards (i.e., ozone, sulfur dioxide, nitrogen dioxide, lead, carbon monoxide, $PM_{2.5}$ and PM–10), ozone precursors, meteorological variables at a select number of sites and other supporting measurements. Accompanying the pollutant concentration data are quality assurance/quality control data and air monitoring network design information.

The U.S. EPA and others (e.g., State and local air quality management agencies, tribal entities, environmental groups, academic institutions, industrial groups) use the ambient air quality data for many purposes, including informing the public and other interested parties of an area's air quality, judging an area's (e.g., county, city, neighborhood) air quality in comparison with the established health or welfare standards (including both national and local standards), evaluating an air quality management agency's progress in achieving or maintaining air pollutant levels below the national and local standards, developing and revising State Implementation Plans (SIPs) in accordance with 40 CFR part 51, evaluating air pollutant control strategies, developing or revising national control policies, providing data for air quality model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, air quality trends assessment, and air pollution research.

The State and local agencies and tribal entities with responsibility for reporting ambient air quality data and information as requested in this ICR submit these data electronically to the U.S. EPA's Air Quality System (AQS) database. Quality assurance/quality control records and monitoring network documentation are also maintained by each State and local agency, in AQS electronic format where possible.

Respondents/Affected Entities: State and local air pollution agencies and Tribal entities.

Respondent's obligation to respond: Mandatory.

Estimated Number of Respondents: 142.

Frequency of Response: Quarterly, but may occur more frequently.

Total Estimated Annual Hour Burden: 49,474 hours. Burden is defined at 5 CFR 1320.3(b).

Total Estimated Annual Cost: $3,261,007. This includes an estimated labor cost of $2,737,485 and an estimated cost of $523,522 for operations and maintenance and capital costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–10009 Filed 4–26–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9807–1]

Forum on Environmental Measurements Announcement of Competency Policy for Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of Competency Policy for Assistance Agreements.

SUMMARY: The Environmental Protection Agency's Forum on Environmental Measurements (FEM) is implementing an Agency-wide policy requiring organizations generating or using environmental data under certain Agency-funded assistance agreements to submit documentation of their competency prior to award of the agreement, or if that is not practicable, prior to beginning any work involving the generation or use of environmental data under the agreement. The Policy was originally approved on December 12, 2012 by the Science Technology Policy Council (STPC) and will be effective on May 15, 2013. The Policy will apply to all competitive and non-competitive assistance agreements expected to exceed a total maximum value of $200,000 (in federal funding) and awarded based on solicitations issued after May 14, 2013. The Policy will be reviewed against frequently asked questions within two years after its effective data and will either be reissued without revision, reissued with revisions, or rescinded.

FOR FURTHER INFORMATION CONTACT: Comments or questions should be sent

to Ms. Lara P. Phelps, US EPA (E243–05), 109 T. W. Alexander Drive, Research Triangle Park, NC 27709; emailed to *phelps.lara@epa.gov;* or call (919) 541–5544.

SUPPLEMENTARY INFORMATION: For purposes of this Policy, the following definitions apply:

Accreditation—As defined in various International Organization for Standardization (ISO) publications and glossaries, accreditation is a procedure by which an authoritative body gives formal recognition that an entity is competent to carry out specific tasks.

Assistance agreement—As described in the U.S. EPA Grants and Debarment Glossary (*http://www.epa.gov/ogd/recipient/glossary.htm*), an assistance agreement is the legal instrument that the U.S. EPA uses to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose. It is either a grant or a cooperative agreement and will specify certain things including: budget and project periods; the federal share of eligible project costs; a description of the work to be accomplished, and any terms and conditions/special conditions.

Competence—As defined in ISO 9000, competence is the demonstrated ability to apply knowledge and skills.

Certification—As similarly defined in various ISO publications and glossaries, certification is the recognition provided by an independent body related to products, processes, systems or persons.

Environmental data—As defined in the U.S. EPA Quality Policy (CIO 2106.0; 10/20/08), environmental data include any measurements or information that describe environmental processes, location or conditions; ecological or health effects and consequences; or the performance of environmental technology.

Applicability

This Policy applies to all U.S. EPA programs (e.g., Program Offices, Regional Offices, and Laboratories) responsible for evaluating, issuing, and/or managing Agency assistance agreements involving organizations generating or using environmental data through environmental sample collection, field measurements and/or laboratory analyses. It applies to new competitive and non-competitive awards that at the time of solicitation issuance or award are expected to exceed $200,000 (in federal funding) in total maximum value (including any amendments).[1] This is an additional award requirement to be implemented by the project officer(s) and overseen by the project officer(s) or their technical designee(s). This Policy does not replace any existing requirements (e.g., general information, quality system requirements documentation) or prohibit an Agency program from placing additional requirements or stipulations on an organization receiving an award. Project officers are responsible for implementing the requirements under this Policy and ensuring that appropriate solicitation provisions and programmatic terms and conditions, if necessary, are included in solicitations and assistance agreements.

As mentioned above, this Policy applies to:

- Awards made under competitive solicitations issued after May 14, 2013 that are expected to exceed $200,000 (in federal funding) in maximum total value and involve the use or generation of environmental data; and
- Non-competitive assistance agreements awarded after May 14, 2013 that are expected to exceed $200,000 (in federal funding) in total maximum value and involve the use or generation of environmental data.

Background/Authority

The U.S. EPA Science Policy Council (now U.S. EPA Science and Technology Policy Council) established the Forum on Environmental Measurements (FEM) as a standing committee of senior U.S. EPA managers who provide the Agency and the public with a focal point for addressing measurement, monitoring and laboratory issues with multi-program impact. Since the inception of the FEM in April 2004, an action item has existed for the FEM to assure the competency of organizations funded by the Agency under acquisition and/or assistance agreements to generate environmental data through measurement activities. The goal is to assure that, nationwide, organizations performing environmental data operations have effective quality management systems and technical competence, and thus have the capability to generate valid environmental data.

In 2004, the Agency issued a policy to assure the competency of U.S. EPA laboratories. In 2011, the Agency issued a second policy to assure the competency of organizations (e.g., laboratories, field sampling and measurement) generating environmental data under Agency-funded acquisitions (i.e., contracts).

The Policy announced today was developed to ensure the use of competent organizations for performing activities involving the use or generation of environmental data under Agency-funded assistance agreements. As explained below, these organizations will have to demonstrate competency either prior to award or prior to beginning such activities. Project officers are responsible for implementing this requirement.

A Frequently Asked Question document is available with further details on implementing this Policy.[2] This will be revised and updated as necessary. Questions as to whether activities involve the use or generation of environmental data and are covered by this Policy should be referred to the FEM (*http://www.epa.gov/fem/lab_comp.htm*).

Requirements

Organizations performing activities involving the use or generation of environmental data under covered assistance agreements shall provide the Agency with:

- Quality documentation such as a quality management plan (QMP), and/or other documentation that demonstrates conformance to U.S. EPA quality program requirements; [3] and
- Demonstration of competency in the field(s) of expertise.

Demonstration of competency may include (but not be limited to):

- Current participation in accreditation or certification programs that are applicable to the environmental data generated under the Agency-funded assistance;
- Ongoing participation by the organization in proficiency testing (PT) or round robin programs conducted by external organizations;
- Ongoing U.S. EPA accepted demonstrations and audits/assessments of proficiency; and
- Other pertinent documentation that demonstrates competency (e.g., past performance to similar statement of work [SOW]).

Assistance agreement solicitations and agreements will include applicable provisions and terms and conditions. Examples will be contained in the FAQ document.

Implementation

Competitive awards and solicitations: Program offices that issue competitive solicitations expected to result in awards exceeding $200,000 (in federal funding) in total maximum value that

[1] While this Policy does not apply to existing awards, or awards under the dollar threshold, offices are encouraged to apply this Policy to those awards as deemed appropriate.

[2] See *http://www.epa.gov/fem/lab_comp.html.*

[3] See *http://www.epa.gov/quality.*

will involve the generation or use of environmental data must include a provision in the solicitation indicating that applicants for these awards must demonstrate competency (i) prior to award or (ii) if that is not practicable or will unduly delay the award prior to beginning such activities under the award. For awards covered by (i) above where the Project Officer obtains the competency demonstration prior to award the Project Officer will include the demonstration in their file. For awards covered by (ii) above, where the competency demonstration will be made after award, the Project Officer will include a programmatic term and condition in the grant requiring the grantee to demonstrate competency prior to performing any work involving the use or generation of environmental data. This competency demonstration should be documented in the project officer's file. Sample clauses will be provided in the FAQ document.

Non-competitive awards: Program offices that make non-competitive awards expected to exceed $200,000 (in federal funding) in total maximum value that will involve the generation or use of environmental data should ensure that the applicant demonstrates their competency to perform such activities prior to award. This will be documented by the Project Officer in their file. However, if obtaining the competency demonstration prior to award is impracticable or will cause a significant delay of the award, project officers must include a programmatic term and condition in the grant requiring the grantee to demonstrate competency prior to performing any such activities. This competency demonstration should be documented in the project officer's file. Sample clauses will be provided in the FAQ document.

Awards: If, at time of award, it is uncertain whether the award will exceed $200,000 (in federal funding) in total maximum value and involve the generation or use of environmental data, the project officer will include a term/condition in the award that the recipient must demonstrate competency prior to performing any such activities (an example will be put in the FAQ document).

References

- U.S. EPA Grants and Debarment, *http://www.epa.gov/ogd*.
- U.S. EPA CIO 2106.0 *U.S. EPA Quality Policy,* October 20, 2008, *http://www.epa.gov/irmpoli8/policies/21060.pdf*.
- U.S. EPA CIO 2105–P–01–0 *EPA Quality Manual for Environmental Programs,* May 5, 2000, *http://www.epa.gov/irmpoli8/policies/2105P010.pdf*.
- U.S. EPA Agency Policy Directive *Assuring the Competency of Environmental Protection Agency Laboratories,* February 23, 2004, *http://www.epa.gov/fem/pdfs/labdirective.pdf*.
- U.S. EPA Agency Policy Directive FEM–2011–01 *Policy to Assure Competency of Organizations Generating Environmental Measurement Data under Agency Funded Acquisitions,* March 28, 2011, *http://www.epa.gov/fem/pdfs/fem-lab-competency-policy.pdf*.

Dated: April 19, 2013.

Glenn Paulson,

Science Advisor, Office of the Science Advisor.

[FR Doc. 2013–10043 Filed 4–26–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9806–1]

Reissuance of Final NPDES General Permits for Facilities/Operations That Generate, Treat, and/or Use/Dispose of Sewage Sludge by Means of Land Application, Landfill, and Surface Disposal in EPA Region 8

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of NPDES general permits.

SUMMARY: Region 8 of the EPA is hereby giving notice of its reissuance of the National Pollutant Discharge Elimination System (NPDES) general permits for facilities or operations that generate, treat, and/or use/dispose of sewage sludge by means of land application, landfill, and surface disposal in the States of CO, MT, ND, and WY and in Indian country in the States of CO, MT, ND, SD, WY and UT (except for the Goshute Indian Reservation and the Navajo Indian Reservation). The effective date of the general permits is May 13, 2013.

DATES: The general permits become effective on May 13, 2013 and will expire five years from that date. For appeal purposes, the 120 day time period for appeal to the U.S. Federal Courts will begin May 13, 2013.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permits may be obtained from Bob Brobst, EPA Region 8, Wastewater Unit (8P–W–WW), 1595 Wynkoop Street, Denver, CO 80202–1129, telephone (303) 312–6129 or Email at *brobst.bob@epa.gov*. The administrative record is available by appointment for review and copying, fee for copies may be required, at the EPA Region 8 offices during the hours of 10:00 a.m. to 4:00 p.m. Monday through Friday, Federal holidays excluded. The final general permits, the fact sheet, and additional information may be downloaded from the EPA Region 8 Web page at *http://www.epa.gov/region08/water/biosolids/documents.html*. Please allow one week after date of this publication for items to be uploaded to the Web page.

SUPPLEMENTARY INFORMATION: The NPDES permit numbers and the areas covered by each general permit are listed below.

State	Permit No.	Area covered by the general permit
Colorado	COG650000	State of Colorado except for Federal Facilities and Indian country.
	COG651000	Indian country within the State of Colorado and the portions of the Ute Mountain Indian Reservation located in New Mexico and in Utah.
	COG652000	Federal Facilities in the State of Colorado, except those located in Indian country, which are covered under permit COG51000.
Montana	MTG650000	State of Montana except for Indian country.
	MTG651000	Indian country in the State of Montana.
North Dakota	NDG650000	State of North Dakota except for Indian country.
	NDG651000	Indian country within the State of North Dakota (except for Indian country located within the former boundaries of the Lake Traverse Indian Reservation, which are covered under permit SDG651000) and that portion of the Standing Rock Indian Reservation located in South Dakota.
South Dakota	SDG651000	Indian country within the State of South Dakota (except for the Standing Rock Indian Reservation, which is covered under permit NDG651000), that portion of the Pine Ridge Indian Reservation located in Nebraska, and Indian country located in North Dakota within the former boundaries of the Lake Traverse Indian Reservation.

State	Permit No.	Area covered by the general permit
Utah	UTG651000	Indian country within the State of Utah except for the Goshute Indian Reservation, Navajo Indian Reservation, and Ute Mountain Indian Reservation (which is covered under permit COG651000).
Wyoming	WYG650000	State of Wyoming except for Indian country.
	WYG651000	Indian country within the State of Wyoming.

On February 19, 1993 (58 FR 9248), the EPA promulgated ''Standards for the Use or Disposal of Sewage Sludge'' (40 CFR part 503) and made revisions to the NPDES regulations to include the permitting of facilities/operations that generate, treat, and/or use/dispose of sewage sludge. The States of South Dakota and Utah currently are the only States in Region 8 that have been authorized to administer the biosolids (sludge) program. In 2007 EPA reissued general permits for facilities or operations that generate, treat, and/or use/dispose of sewage sludge by means of land application, landfill, and surface disposal in the States of CO, MT, ND, and WY and in Indian country in the States of CO, MT, ND, SD, WY and UT (except for the Goshute Indian Reservation and the Navajo Indian Reservation). Those general permits expired on October 19, 2012, but were administratively extended. Proposed reissuance of the general permits was published in the **Federal Register** on January 4, 2013 (78 FR 727). The public comment period closed on February 19, 2013. Only one comment was received in response to the public notice, a letter from the South Dakota Department of Agriculture. That letter stated ''In response, we offer no comments regarding the notice.'' Accordingly, the permits are being reissued without any change from the public notice draft.

The renewal permits are very similar to the previous permits. The administrative burden for most of the regulated sources is expected to be less under the general permits than with individual permits, and it will be much quicker to obtain permit coverage with general permits than with individual permits. Facilities or operations that incinerate sewage sludge are not eligible for coverage under these general permits and must apply for an individual permit. The deadlines for applying for coverage under the general permits are given in the permits and the Fact Sheet. Facilities/operations that had coverage under the previous general permit and have submitted a timely request for coverage under this renewal permit are covered automatically under the permits unless the permit issuing authority requires the submittal of a new notice of intent (NOI).

Other Legal Requirements

Section 401(a)(1) Certification: Since these permits do not involve discharges to waters of the United States, certification under § 401(a)(1) of the Clean Water Act is not necessary for the issuance of these permits and certification will not be requested.

Economic Impact (Executive Order 12866): The EPA has determined that the issuance of this general permit is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to formal OMB review prior to proposal.

Paperwork Reduction Act: The EPA has reviewed the requirements imposed on regulated facilities in these proposed general permits under the Paperwork Reduction Act of 1980, 44 U.S.C.-501 *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Regulatory Flexibility Act (RFA), 5 U.S.C 601 *et seq.,* as amended by the Small Business regulatory Enforcement Fairness Act (SBREFA): The RFA requires that the EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit proposed today, however, is not a ''rule'' subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the RFA.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' defined to be the same as ''rules'' subject to the RFA) on tribal, state, local governments and the private sector. The permit proposed today, however, is not a ''rule'' subject to the RFA and is therefore not subject to the requirements of the UMRA.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: April 2, 2013.

Derrith R. Watchman-Moore,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. 2013–10050 Filed 4–26–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R07–SFUND–2013–0267; FRL9807–3]

Proposed Administrative Cost Recovery Settlement Under Section 122(h) of the Comprehensive Environmental Response Compensation and Liability Act, as Amended, Leadwood Mine Tailings Superfund Site, St. Francois County, Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response Compensation and Liability Act, as amended (CERCLA), notice is hereby given of a proposed administrative settlement with The Doe Run Resources Corporation, St. Louis, Missouri, for recovery of past response costs concerning the Leadwood Mine Tailings Superfund Site in St. Francois County, Missouri. The settlement requires The Doe Run Resources Corporation to pay $175,000.00 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA. For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the settlement. EPA will consider all comments and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the EPA Region 7 office located at 11201 Renner Boulevard, Lenexa, Kansas 66219.

DATES: Comments must be submitted on or before May 29, 2013.

ADDRESSES: The proposed settlement is available for public inspection at the

EPA Region 7 office, 11201 Renner Boulevard, Lenexa, Kansas, Monday through Friday, between the hours of 8:00 a.m. through 4:00 p.m. A copy of the proposed settlement may be obtained from the Regional Hearing Clerk, 11201 Renner Boulevard, Lenexa, Kansas 66219, (913) 551–7567. Requests should reference the Leadwood Mine Tailings Superfund Site, EPA Docket No. CERCLA–07–2013–0002. Comments should be addressed to: Julie M. Van Horn, Senior Assistant Regional Counsel, 11201 Renner Boulevard, Lenexa, Kansas 66219.

FOR FURTHER INFORMATION CONTACT: Julie M. Van Horn, at telephone: (913) 551–7889; fax number: (913) 551–7925/Attn: Julie M. Van Horn; email address: *vanhorn.julie@epa.gov*.

Dated: April 17, 2013.

Cecilia Tapia,

Director, Superfund Division, EPA Region 7.

[FR Doc. 2013–10045 Filed 4–26–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 13–770]

Pleading Cycle Established for Comment on Applications for State Certification for the Provision of Telecommunications Relay Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks public comment on state applications for renewal of the certification of their state TRS programs pursuant to Title IV of the Americans with Disabilities Act (ADA).

DATES: Comments are due on or before April 29, 2013, and reply comments are on or before May 13, 2013.

ADDRESSES: You may submit comments, identified by CG Docket No. 03–123 and the relevant state identification number of the state application that is being comment upon, by any of the following methods:

Electronic Filers: Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://apps.fcc.gov/ecfs//* or by filing paper copies. Filers should follow the instructions provided on the Web site for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and the applicable docket number.

- *Paper filers:* Parties who choose to file by paper must file an original and one copy of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th St. SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dana Wilson, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2247, or email *Dana.Wilson@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 13–770. Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section. The full text of document DA 13–770, copies of applications for certification, and subsequently filed documents in this matter are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW., Room CY–A257, Washington, DC 20554. Document DA 13–770 also is available on the Commission's Web site at: *http://transition.fcc.gov/cgb/dro/trs.html*. Document DA 13–770, copies of applications for certification, and subsequently filed documents in this matter may also be found by searching ECFS at *http://apps.fcc.gov/ecfs//*. When searching for the state application in ECFS, please enter docket number 03–123 in the proceeding number fill-in block, and the state identification number, (*e.g.,* TRS–19–12) assigned for that specific state application in the bureau identification number fill-in block. They may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th St. SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com*; or by calling (800) 378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

Notice is hereby given that the states listed below have applied to the Commission for renewal of the certification of their state telecommunications relay service (TRS) programs pursuant to Title IV of the ADA, 47 U.S.C. 225, and the Commission's rules, 47 CFR 64.601–605. Current state certifications expire July 25, 2013. A state's application for certification, covering the five year period from July 26, 2013 to July 25, 2018, must demonstrate that the state TRS program complies with section 225 and the Commission's rules governing the provision of TRS. This notice seeks public comment on the following state applications for certification:

File No: TRS–19–12:
Department of Commerce, State of Alaska.
File No: TRS–06–12:
Public Service Commission of West Virginia, State of West Virginia.
File No: TRS–61–12:
Virgin Islands Public Services Commission, U.S. Virgin Islands.

Federal Communications Commission

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2013–09961 Filed 4–26–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation has been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the

following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: April 22, 2013.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

In alphabetical order

FDIC Ref. No.	Bank name	City	State	Date closed
10473	Chipola Community Bank	Marianna	FL	4/19/2013
10474	First Federal Bank	Lexington	KY	4/19/2013
10475	Heritage Bank of North Florida	Orange Park	FL	4/19/2013

[FR Doc. 2013–09963 Filed 4–26–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13–09]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of Meeting.

Description: In accordance with Section 1104 (b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC–400 7th Street SW., Washington, DC 20024.

Date: May 8, 2013.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered

Summary Agenda

April 10, 2013 minutes—Open Session

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Revised ASC Policy Statements

Appraisal Foundation January 2013

Grant Reimbursement Request

Vermont Compliance Review

How To Attend and Observe an ASC Meeting

Email your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: April 23, 2013.

James R. Park,

Executive Director.

[FR Doc. 2013–10011 Filed 4–26–13; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS13–10]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—400 7th Street SW., Washington, DC 20024.

Date: May 8, 2013.

Time: Immediately following the ASC open session.

Status: Closed.

Matters To Be Considered:

April 10, 2013 minutes—Closed Session

Preliminary discussion of State Compliance Reviews

Dated; April 23, 2013.

James R. Park,

Executive Director.

[FR Doc. 2013–10010 Filed 4–26–13; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 14, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *John Crouch,* Fox Point, Wisconsin; to join the existing Lubar Family Control Group and retain voting shares of Ixonia Bancshares, Inc., and thereby indirectly retain voting shares of Ixonia Bank, both in Ixonia, Wisconsin.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Gene R. Giles, Alliance, Nebraska, Sally J. Giles, Denver, Colorado, Randall D. Giles, San Diego, California, Nicholas G. Giles, and Lucas G. Giles,* both of Lincoln, Nebraska; all of the Giles family group; the Bradley S. Norden Irrevocable Trust, and the Brett A. Norden Irrevocable Trust, Brett A. Norden and Bradley S. Norden, as co-trustees of both trusts, all of Highlands Ranch, Colorado, and as members of the Norden family group; the Michael L. Ryan 2011 Irrevocable Trust and the Cheryl L. Ryan 2012 Irrevocable Trust, both of Minden, Nebraska, Jeffrey M. Ryan, Heartwell, Nebraska, and Jamie Johnson, Minden, Nebraska, as co-trustees of both trusts; and Walter D. Wood Revocable Trust, Walter D. Wood, trustee, both of Omaha, Nebraska, as part of the Ryan/Wood family group; to acquire voting shares of First Central Nebraska Co., and thereby indirectly acquire voting shares of Nebraska State Bank and Trust Company, both in Broken Bow, Nebraska.

Board of Governors of the Federal Reserve System, April 24, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–10030 Filed 4–26–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 2013.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *Oakworth Capital, Inc.,* Birmingham, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Oakworth Capital Bank, Birmingham, Alabama.

B. Federal Reserve Bank of San Francisco (Gerald C. Tsai, Director, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *TFB Bancorp, Inc.,* Yuma, Arizona; to become a bank holding company by acquiring 100 percent of the voting shares of The Foothills Bank, Yuma, Arizona.

Board of Governors of the Federal Reserve System, April 24, 2013.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2013–10029 Filed 4–26–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Improving Sickle Cell Transitions of Care through Health Information Technology Phase 1.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on February 7th, 2013 and allowed 60 days for public comment. No comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by May 29, 2013.

ADDRESSES: Written comments should be submitted to: AHRQ's OMB Desk Officer by fax at (202) 395–6974 (attention: AHRQ's desk officer) or by email at *OIRA_submission@omb.eop.gov* (attention: AHRQ's desk officer).

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Improving Sickle Cell Transitions of Care through Health Information Technology Phase I

This project is the first phase in AHRQ's effort toward the development of a health information technology (HIT) enabled tool designed to aid adolescents and young adults with sickle cell disease (SCD) during transitions of care. SCD is a serious, genetic blood disorder that affects approximately 70,000–100,000 Americans, including one out of every 500 African American and one out of every 36,000 Hispanic American births. Persons with SCD produce abnormal, ''sickle-shaped'' red blood cells that obstruct blood vessels, leading to life-long anemia, organ damage, increased potential for infections, chronic episodes of pain, and substantially shortened life spans. SCD has been noted to be understudied relative to its prevalence resulting in a lack of knowledge about the important variables and domains that determine health outcomes for patients. Furthermore, patients with SCD, typically young, minority, and often of lower income status, have had few opportunities to voice their needs and concerns about their health and health care.

As recently as 30 years ago, children with SCD usually did not survive into adulthood. Now, as a result of advances in screening and treatment, more than 90 percent of individuals with SCD reach adulthood, and life expectancy is typically into the fifth decade. Persons with SCD experience multiple transitions of care as a result of the chronicity of SCD, frequency of both acute and chronic-events requiring care,

as well as the advancements in life expectancy. Transitions of care occur when either the setting of care changes (e.g., from home-based to hospital-based care) or the focus of care changes (e.g., from pediatric-focused to adult-focused care). When transitions of care occur, a need to share medical history and other types of health information arises. Transitions of care are more likely to be successful when this health information is accurate, tailored to the type of transition taking place, and communicated effectively.

Times of care transitions are particularly fraught for patients with SCD and currently, few patients have access to effective transition programs for SCD. In a 2010 survey of pediatric SCD providers, the majority claimed to have transition programs in place but they were often newly formed and without the ability to transfer care to adult providers with specific expertise in SCD.

Preliminary evidence suggests that HIT can be helpful for SCD and similar conditions. In particular, a technology-based tool has already been used successfully by patients with SCD to help with some aspects of disease management. In one study, a handheld wireless device was used to implement a pain management protocol and found to result in high rates of participation and satisfaction. Technology-based tools or applications—''apps''—have also been effective in improving care transitions for other chronic diseases such as diabetes and HIV, which can serve as models for this tool.

Improving transitions of care is the focus of AHRQ's plans to respond to the Department of Health and Human Services' (HHS') SCD Initiative announced in 2011. The overall HHS SCD initiative, which is aligned with AHRQ's mission, aims to improve the health of persons with SCD through various activities, including developing and disseminating evidence-based guidelines, increasing the availability of medical homes that provide SCD care, and supporting research in areas such as pain and disease management, all of which could also be supported through the use of an effective HIT enabled tool.

The goals of this project are to:

(1) Gain the necessary background knowledge including qualitative information from key stakeholders, to establish a set of requirements that would guide the design and development of a HIT-enabled tool in future phases of work that meets patients', families', and providers' needs to aid adolescents and young adults with sickle cell disease during transitions of care.

(2) Develop an understanding of the environmental context, current facilitators and barriers, health data use and needs of key stakeholders affected by sickle cell disease, including patients, families, and providers.

This study is being conducted by AHRQ through its contractor, The Lewin Group in partnership with Children's National Medical Center, Cincinnati Children's Hospital Medical Center, Nemours Children's Clinic-Jacksonville, and the National Initiative for Children's Healthcare Quality, pursuant to AHRQ's statutory authority to conduct and support research on healthcare and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of healthcare services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project, the following activities and data collections will be implemented:

(1) Environmental Scan—AHRQ will execute a literature review to identify potentially relevant scientific literature and information from other literature and sources as well as complete a search for existing tools that aid transitions of care for persons with SCD or similar conditions. This will provide contextual background about the current state of the field with regards to tool-development and use, identify key-issues of patients with SCD related to care transitions, and understand the context of care delivered and health data information needs to inform the content, design and functionality of a tool. This activity does not impose a burden on the public and is not included in the burden estimates in Exhibit 1.

(2) Focus Groups—AHRQ will facilitate ten focus groups of key stakeholder groups including: parents/caregivers of patients with SCD; health care providers (e.g. SCD specialists, primary care physicians (PCPs), hospitalists and emergency room (ER) physicians); IT developers; SCD patients ages 9–13; SCD patients ages 14–17; SCD patients 18 and older; and SCD patients of mixed ages; to gather qualitative information on stakeholder experiences with SCD and care transitions, barriers to quality care, and use of technology to inform tool design and functionality. Each group will consist of 10 participants and will be asked to describe their particular experiences with health care transitions, communication practices, information needs and technology use in order to develop relevant ''use cases'' which will be used by investigators and tool developers for the later phases of the project. The in-person nature of focus groups allows for a more in-depth and targeted discussion, including participant experiences, impressions and priorities in a detailed fashion.

(3) Demographic Questionnaire—AHRQ will implement a short demographic questionnaire at the start of each of the ten focus groups to collect basic demographic information to allow the team to contextualize findings from each focus group. Questionnaires are tailored to each focus group category: Parents/caregivers of patients with SCD; providers, hospitalists and ER physicians; IT developers; SCD patients ages 9–13; SCD patients ages 14–17; SCD patients 18 and older; and SCD patients of mixed ages.

(4) Key Informant Interviews—AHRQ will conduct eight key informant interviews with stakeholders such as State Medicaid representatives, attorneys with expertise in privacy and security issues, representatives from the Office of the National Coordinator for Health Information Technology (ONC), Office of Chief Scientist, and other relevant policy makers. Qualitative information gained will contribute to tool development recommendations particularly in terms of cost issues related to reimbursement by payers, needs for proof of effectiveness, sustainability, and potential vehicles for facilitating and funding tool development and implementation.

The information gained from the focus groups and key informant interviews will be used to understand if and how a patient-centered, HIT-enabled tool can improve the health of individuals with SCD during care transitions.

Focus groups as a form of qualitative research are an important vehicle for gathering and explicating insight from the field, especially if, as in this case, the important domains are not yet understood, and need to be outlined by respondents, rather than suggested by investigators. Thus active recruitment and qualitative techniques are a means to incorporate this necessary and important perspective into the derivation of effective interventions. The primary objective of the focus groups is to gather more richly nuanced information from sickle cell disease stakeholders. The in-person nature of focus groups allows for a more in-depth and targeted discussion, including participant experiences, impressions and priorities in a detailed fashion.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden hours for the respondents' time to participate in this research. The demographic questionnaire will be completed by each focus group participant and takes 6 minutes to complete. All of the focus groups and key informant interviews will last 2 hours except for the IT developer focus group which will last 4 hours. Each focus group will consist of 10 persons. There will be two focus groups with providers, three with parents/caregivers, one group for IT developers, and one focus group with each of the four patient groups. Key informant interviews will be conducted with eight individuals. The total burden is estimated to be 246 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to participate in this research. The total cost burden is estimated to be $8,174 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Demographic Questionnaire	100	1	6/60	10
Provider Focus Groups	20	1	2	40
Parent/Caregiver Focus Groups	30	1	2	60
IT Developer Focus Group	10	1	4	40
Patients 9–13 Focus Group	10	1	2	20
Patients 14–17 Focus Group	10	1	2	20
Patients 18 & older Focus Group	10	1	2	20
Patients mixed ages Focus Group	10	1	2	20
Key Informant Interviews	8	1	2	16
Total	208	na	na	246

EXHIBIT 2—ESTIMATED ANNUALIZE COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly rate*	Total cost burden
Demographic Questionnaire	100	10	[a] $26.89	$269
Provider Focus Groups	20	40	[b] 88.78	3,551
Parent/Caregiver Focus Groups	30	60	[c] 21.74	1,304
IT Developer Focus Group	10	40	[d] 44.27	1,771
Patients 9–13 Focus Group	10	20	[e] 0	0
Patients 14–17 Focus Group	10	20	[e] 0	0
Patients 18 & older Focus Group	10	20	[c] 21.74	435
Patients mixed ages Focus Group	10	20	[e] 0	0
Key Informant Interviews	8	16	[f] 52.72	844
Total	208	246	na	8,174

[a] Based on the mean wages for Physicians & Surgeons, All other (29–1069), All Occupations (00–0000), Software Developer (15–1132). Wages for children averaged in as $0.
[b] Based on the mean wages for Physicians & Surgeons, All other (29–1069).
[c] Based on the mean wages for All Occupations (00–0000).
[d] Based on the mean wages for Software Developer (15–1132).
[e] No wage data for children.
[f] Based on the mean wages for Lawyers (23–1011), Social and Community Service Managers (11–9151), Medical and Health Services Managers (11–9111), and Computer and Information System Managers (11–3021).
* National Compensation Survey: Occupational wages in the United States May 2011, ''U.S. Department of_Labor, Bureau of Labor Statistics.''*http://www.bls.gov/oes/current/oes_nat.htm#15–0000.*

Estimated Annual Costs to the Federal Government

Exhibit 3 shows the estimated total and annualized cost to the federal government over 18 months. The total cost to the federal government of this data collection effort is $264,043. This figure includes development of draft and final plans for conducting focus groups and interviews; development of materials including moderator guides for each stakeholders group (seven guides in total), recruitment materials for all four sites, consent forms; facilitating IRB approval processes at four sites; logistics coordination including securing facility space; recruitment of participants; incentives for participants (as described in section 9 above); and analyzing and summarizing findings as well as preparing final reports.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST

Cost component	Total cost	Annualized cost
Project Development	$23,689	$15,793
Data Collection Activities	169,586	113,057
Data Processing and Analysis	16,000	10,667
Publication of Results	33,472	22,315

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST—Continued

Cost component	Total cost	Annualized cost
Project Management	18,319	12,213
Overhead	2,977	1,985
Total	264,043	176,029

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: April 15, 2013.

Carolyn M Clancy,

Director.

[FR Doc. 2013–09742 Filed 4–26–13; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–13RE]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, at 1600 Clifton Road, MS D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Public Health Systems, Mental Health and Community Recovery—New—Office of Public Health Preparedness and Response, Division of State and Local Readiness, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This project stems from, and aligns with, publication of the Office of Public Health Preparedness and Response's (OPHPR) ''National Strategic Plan for Public Health Preparedness and Response'' which provides overall direction for Centers for Disease Control and Prevention's (CDC) preparedness and response portfolio, including programmatic direction across OPHPR's four divisions. The focus of this project is to generate findings useful for future preparedness planning and response in order to develop strategies and interventions aimed at mitigating the impact of adverse events. In April 2011, one of the largest tornado outbreaks ever recorded, a ''Super Outbreak,'' occurred in the southeastern United States, resulting in more than 300 deaths and an estimated $11 million in damages. This large-scale multistate tragedy offers a unique opportunity to study how communities with similar cultural and geographic features yet different public health and mental health emergency response systems could provide access to care around the same crisis. The outcomes of these efforts can inform the field of what effect these differences had on the recovery patterns of each of these communities. By doing so, we can begin to elucidate best practices for robust community preparedness and recovery with attention to types of services that most effectively promote the natural resilience of survivors. Two primary research questions will guide the proposed study:

1. How did the Alabama and Mississippi State and local public health and mental health (PH/MH) systems prepare for, respond to, and support recovery after the April 2011 tornados?

2. To what extent have these communities recovered and what is the overall health and quality of life of individuals affected by these events?

CDC requests Office of Management and Budget (OMB) approval to collect information for two years.

To address these questions, CDC, in collaboration with ICF International, will conduct a mixed method evaluation utilizing key informant interviews of public health and mental health agency staff and other community representatives at the local, county and State levels and household survey data in each of the four regions in Mississippi and Alabama to assess community recovery and resilience. Specifically, the study design includes two main components (qualitative and quantitative) designed to comprehensively examine the PH/MH system response to and community recovery and resilience from disasters.

The total estimated burden for the 98 one-time qualitative interviews for public health/mental health professionals and community leaders is 98 hours (98 respondents × 1 hour/response). Interviews will be conducted during an in-person site-visit to the region to reduce travel and time burdens on the respondents. Respondents unable to participate during the site visit may participate via telephone. In addition, the total estimated burden for the quantitative computer-assisted interviews are based on 860 respondents in each of the four tornado effected regions; each survey will be approximately 25 minutes (4 counties × 860 respondents = 3,440 respondents;

3,440 respondents × 25/60 minutes = 1,433 hours). In total, this will be approximately 1,531 hours.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Mental Health/Public Health Agency Staff and Community Leaders.	Community Recovery Interview Guide.	98	1	1	98
General Public from Disaster affected communities.	Public Health Systems, Mental Health and Community Recovery Household Survey.	3,440	1	25/60	1,433
Total	.....	.....	.....	.....	1,531

Ron A. Otten,

Director, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director. Centers for Disease Control and Prevention.

[FR Doc. 2013–09992 Filed 4–26–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–1984–14, CMS–10115, CMS–10130, and CMS–10479]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Hospice Facility Cost Report; *Use:* In accordance with sections 1815(a), 1833(e) and 1861(v)(1)(A) of the Social Security Act (the Act), providers of service in the Medicare program are required to submit annual information to achieve reimbursement for health care services rendered to Medicare beneficiaries. In addition, 42 CFR 413.20(b) specifies that cost reports are required from providers on an annual basis. Such cost reports are required to be filed with the provider's Medicare contractor. The functions of the Medicare contractor are described in section 1816 of the Act. Section 3132 of the Affordable Care Act requires that CMS collect appropriate data and information to facilitate hospice payment reform. *Form Number:* CMS–1984–14 (OCN: 0938–0758); *Frequency:* Yearly; *Affected Public:* Private sector (business or other for-profit and not-for-profit institutions); *Number of Respondents:* 2,751; *Total Annual Responses:* 2,751; *Total Annual Hours:* 517,188. (For policy questions regarding this collection contact Gail Duncan at 410–786–7278. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens, Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). *Use:* Section 1011 of the MMA provides that the Secretary will establish a process (i.e., enrollment and claims payment) for eligible providers to request payment. The Secretary must directly pay hospitals, physicians and ambulance providers (including Indian Health Service, Indian Tribe and Tribal organizations) for their otherwise unreimbursed costs of providing services required by section 1867 of the Social Security Act and related hospital inpatient, outpatient and ambulance services. CMS will use the application information to administer this health services program and establish an audit process. *Form Number:* CMS–10115 (OCN: 0938–0929); *Frequency:* Once and occasionally; *Affected Public:* Private sector (business or other for-profit and not-for-profit institutions); *Number of Respondents:* 10,000; *Total Annual Responses:* 10,000; *Total Annual Hours:* 5,000. (For policy questions regarding this collection contact Fred Rooke at 404–562–7502. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens, Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA): ''Section 1011 Provider Payment Determination'' and ''Request for Section 1011 Hospital On-Call Payments to Physicians'' Forms. *Use:* Section 1011 of the MMA requires that the Secretary establish a process under which eligible providers (certain hospitals, physicians and ambulance providers) may request payment for (claim) their otherwise unreimbursed costs of providing eligible services. The Secretary must make quarterly payments directly to such providers. The Secretary must also implement measures to ensure that inappropriate, excessive, or fraudulent payments are not made under Section 1011, including certification by providers of the veracity of their requests for payment. Both forms have been established to address the statutory requirements outlined above. *Form Number:* CMS–10130 (OCN: 0938–0952); *Frequency:* Occasionally; *Affected Public:* Private sector (business or other for-profit and not-for-profit institutions); *Number of Respondents:*

12,037; *Total Annual Responses:* 300,148; *Total Annual Hours:* 75,037. (For policy questions regarding this collection contact Fred Rooke at 404–562–7205. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Multi-Payer Advanced Primary Care Practice (MAPCP) Demonstration Focus Group Protocols; *Use:* On September 16, 2009, the Department of Health and Human Services announced the establishment of the Multi-payer Advanced Primary Care Practice (MAPCP) Demonstration, under which Medicare joined Medicaid and private insurers as a payer participant in state-sponsored patient-centered medical home (PCMH) initiatives. CMS selected eight states to participate in this demonstration: Maine, Vermont, Rhode Island, New York, Pennsylvania, North Carolina, Michigan, and Minnesota. CMS is proposing to conduct in-person focus groups with Medicare and Medicaid beneficiaries and their caregivers to more thoroughly understand patients' experiences with their PCMHs and how well their PCMHs are serving their needs.

The focus groups will provide CMS with answers to fundamental ''what, how, and why'' questions about beneficiaries' experiences with care and access to and coordination of care. The information obtained via in-person, focus groups will be utilized by CMS for the evaluation of the MAPCP Demonstration. The focus group data will be collected to supplement other qualitative and quantitative analyses from primary and secondary data sources by providing data on context, structure, and process, as well as select aspects of the key outcomes. The data gathered from the interviews will allow for more complete interpretation of the quantitative claims and other data analysis by taking into account the unique perspectives of beneficiaries. *Form Number:* CMS–10479 (OCN: 0938–NEW); *Frequency:* Annually; *Affected Public:* Individuals and households; *Number of Respondents:* 768; *Total Annual Responses:* 384; *Total Annual Hours:* 1,152. (For policy questions regarding this collection contact Suzanne Goodwin at 410–786–0226. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *June 28, 2013:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 23, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–09948 Filed 4–26–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection, 60-day Comment Request: Certificate of Confidentiality Electronic Application System

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, to provide the opportunity for public comment on proposed data collection projects, the Office of Extramural Research (OER) of the National Institutes of Health (NIH) is developing an electronic application form for the submission of requests to NIH for Certificates of Confidentiality (CoCs).

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and For Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Ann M. Hardy, NIH Extramural Human Research Protections Officer and Coordinator, Certificates of Confidentiality, Office of Extramural Programs, OER, NIH, 3701 Rockledge Drive, Room 3002, Bethesda, MD 20892; or call the non-toll-free number (301) 435–2690; or email your request, including your address, to *hardyan@od.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Certificate of Confidentiality Electronic Application System 0925–New, Office of Extramural Research (OER), National Institutes of Health (NIH).

Need and Use of Information Collection: This application system will provide one electronic form to be used by all research organizations that wish to request a Certificate of Confidentiality (CoC) from NIH. As described in the authorizing legislation (Section 301(d) of the Public Health Service Act, 42 U.S.C. 241(d)), CoCs are issued by the agencies of the Department of Health and Human Services (HHS), including NIH, to authorize researchers conducting sensitive research to protect the privacy of human research subjects by enabling them to refuse to release names and identifying characteristics of subjects to anyone not connected with the research. At the NIH, the issuance of CoCs has been delegated to the individual NIH Institutes and Centers (ICs). The NIH ICs collectively issue approximately 1,000 new CoCs each year for eligible research projects. However, the process for submitting a CoC request is not consistent across the ICs, which creates confusion for applicants. To make the application process consistent across the entire agency, the OER is proposing to use an electronic application system that will be accessed by research organizations that wish to request a CoC from any NIH

IC. Having one system for all CoC applications to NIH will be efficient for both applicants and NIH staff who process these requests. As is currently done, the NIH will use the information in the application to determine eligibility for a CoC and to issue the CoC to the requesting organization.

Office of Management and Budget approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours is 1,500.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response (in hours)	Total annual burden hours
CoC Applicants- Private	400	1	1.5	600
CoC Applicants- State/local	450	1	**1.5**	675
CoC Applicants- Small business	50	1	**1.5**	75
CoC Applicants- Federal	100	1	**1.5**	150

Dated: April 22, 2013.

Lawrence A. Tabak,

Principal Deputy Director, National Institutes of Health.

[FR Doc. 2013–10041 Filed 4–26–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request: Request for Human Embryonic Stem Cell Line To Be Approved for Use in NIH-Funded Research

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection instrument listed below. This proposed information collection was previously published in the **Federal Register** on February 28, 2013, pages 13688–13689, and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov*; or by fax to 202–395–6974, Attention: NIH Desk Officer.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Ellen Gadbois, Office of Science Policy, Office of the Director, NIH, Building 1, Room 218, MSC 0166, 1 Center Drive, Bethesda, MD 20892; or call the non-toll-free number 301–496–1454; or email your request, including your address, to *gadboisel@od.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Request for Human Embryonic Stem Cell Line to be Approved for Use in NIH-Funded Research, 0925–0601, Expiration Date 04/30/2013—EXTENSION, Office of Extramural Research, National Institutes of Health (NIH).

Need and Use of Information Collection: The form is used by applicants to request that human embryonic stem cell lines be approved for use in NIH-funded research. Applicants may submit applications at any time.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours is 2,550.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
NIH grantees and others in possession of hESC lines	50	3	17	2,550

Dated: April 22, 2013.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2013–10042 Filed 4–26–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R5–R–2013–N065; BAC–4311–K9–S3]

Prime Hook National Wildlife Refuge, Sussex County, DE; Record of Decision for Final Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; final comprehensive conservation plan and record of decision.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final comprehensive conservation plan (CCP) and record of decision (ROD) for Prime Hook National Wildlife Refuge (NWR). We completed a thorough analysis of the environmental, social, and economic considerations and presented it in our final CCP and environmental impact statement (EIS), which we released to the public on December 28, 2012. The ROD documents our decision to implement alternative B, as described in the final CCP/EIS. The Regional Director, U.S. Fish and Wildlife Service, Northeast Region, signed the ROD on March 29, 2013. We will begin implementation of the CCP immediately.

ADDRESSES: You may view or obtain copies of the final CCP and ROD by any of the following methods:

Agency Web site: Download a copy of the document at *http://www.fws.gov/northeast/planning/Prime%20Hook/ccphome.html.*

Email: Send requests to *northeastplanning@fws.gov.* Include ''Prime Hook NWR'' in the subject line of your email.

U.S. Mail: Thomas Bonetti, Natural Resource Planner, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

Fax: Attention: Thomas Bonetti, 413–253–8468.

In-Person Viewing or Pickup: Call 302–684–8419 to make an appointment (necessary for view/pickup only) during regular business hours at Prime Hook NWR, 11978 Turkle Pond Road, Milton, DE 19968.

FOR FURTHER INFORMATION CONTACT: Thomas Bonetti, Natural Resource Planner, 413–253–8307 (phone); *northeastplanning@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we finalize the CCP process for Prime Hook NWR. We began this process through a notice of intent in the **Federal Register** (70 FR 60365) on October 17, 2005. On May 9, 2011, we announced our decision to prepare an EIS in conjunction with the CCP, rather than an environmental assessment (76 FR 26751). On May 31, 2012, we released the draft CCP/EIS for public review and comments (77 FR 32131). We subsequently extended the public comment period (77 FR 47435) on August 8, 2012. We released the final CCP/EIS for public review on December 28, 2012 (77 FR 76510).

In the draft and final CCP/EIS, we evaluated three alternatives for managing the refuge and completed a thorough analysis of the environmental, social, and economic considerations of each alternative. Based on comments received on the draft CCP/EIS, we made minor modifications to alternative B, the Service's preferred alternative in the final CCP/EIS. During the public review period for the final CCP/EIS, we did not receive any comments that raised significant new issues, resulted in changes to our analysis, or warranted any further changes to alternative B.

In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces our decision to select alternative B for implementation and the availability of the ROD and final CCP for Prime Hook NWR. Alternative B, as described in the final CCP, will guide our management and administration of the refuge over the next 15 years.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each NWR. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and goals and contributing to the mission of the National Wildlife Refuge System (NWRS). CCPs should be consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies, as well as respond to key issues and public concerns. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years, in accordance with the Refuge Administration Act.

Prime Hook NWR

In 1963, Prime Hook NWR was established under the authority of the Migratory Bird Conservation Act ''for use as an inviolate sanctuary, or any other management purpose, expressly for migratory birds.'' It was established primarily to preserve coastal wetlands as wintering and breeding habitat for migratory waterfowl. The 10,144-acre refuge stretches along the west shore of Delaware Bay and is located 22 miles southeast of Dover, Delaware. Eighty percent of the refuge is tidal and freshwater wetlands that flow into the Delaware Bay and surrounding coastal marshes. The remaining 20 percent of the refuge consists of upland habitats that abut intensive agricultural and residential developments.

CCP Alternatives

During the scoping phase of the planning process, we identified the following list of major issues based on input from the public, State or Federal agencies, other Service programs, and our planning team: Climate change, sea level rise, refuge marshes, habitat and wildlife species management, mosquito control, hunting and other public uses, and nuisance and invasive species control. We developed refuge management alternatives to address these issues; help achieve refuge goals, objectives, and purposes; and support the NWRS mission. Our draft CCP/EIS (77 FR 32131) and final CCP/EIS (77 FR 76510) fully analyze three alternatives for the future management of the refuge: (1) Alternative A, Current Management; (2) Alternative B, Service-preferred Alternative; and (3) Alternative C, Historic Habitat Management. Alternative A satisfies the NEPA requirement of a ''No Action'' alternative. Both the draft and final plans identify alternative B as the Service-preferred alternative. Please refer to the final CCP/EIS for more details on each of the alternatives.

Basis for Selected Alternative

Our decision is to adopt alternative B, as described in the final CCP. We provide a brief summary of our decision below. For the full basis of our decision, please see the ROD (see **ADDRESSES**).

We determined that, compared to the other two alternatives, alternative B includes the suite of actions that best meet the purpose of, and need for, the CCP; achieve refuge purposes and goals; contribute toward the mission of the NWRS; address the relevant issues, concerns, and opportunities identified in the planning process; and protect, preserve, and enhance natural resources on the refuge. Alternative B is also consistent with the sound principles of fish and wildlife and fulfills our statutory and regulatory guidance.

We believe that alternative B uses the most balanced and integrated approach to refuge management, with due consideration for both the biological and human environment. Alternative B will best fulfill the refuge's biological goals, by emphasizing management for particular Federal trust species and habitats that are of regional conservation concern. Alternative B would also best restore the natural ecology and hydrology of Prime Hook's barrier island and marsh system and provide valuable ecosystem services, such as storm surge protection and flood protection. Compared to the other alternatives, our proposal under alternative B to restore refuge impoundments to healthy, self-sustaining brackish marsh and salt marsh will encourage the conditions most resilient to sea level rise; have sustainable, long-term benefits to neighboring human communities; and provide valuable habitat for waterfowl, songbirds, waterbirds, shorebirds, and other wildlife. Alternative B will also best enhance visitor services by expanding access to facilities and opening new trails for wildlife observation, photography, interpretation, environmental education, hunting, and fishing, and modifying the hunting program for greater administrative efficiency.

In summary, we selected alternative B for implementation because it provides the greatest opportunities for Prime Hook NWR to contribute to the conservation of fish, wildlife, and habitat in the region; will increase the capacity of the refuge to meet its purposes and contribute to the NWRS mission; and will provide the means to better respond to changing ecological conditions within the surrounding environment.

Public Availability of Documents

You can view or obtain the final CCP and ROD as indicated under **ADDRESSES**.

Dated: April 19, 2013.

Sherry W. Morgan,

Acting Regional Director, Northeast Region.

[FR Doc. 2013–09754 Filed 4–26–13; 8:45 a.m.]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2012–N287; 91400–5110–0000; 91400–9410–0000]

Multistate Conservation Grant Program; Priority List and Approval for Conservation Projects

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of receipt of priority list and approval of projects.

SUMMARY: We, the U.S. Fish and Wildlife Service (FWS), announce the fiscal year 2013 priority list of wildlife and sport fish conservation projects from the Association of Fish and Wildlife Agencies (AFWA). As required by the Wildlife and Sport Fish Restoration Programs Improvement Act of 2000, AFWA submits a list of projects to us each year to consider for funding under the Multistate Conservation Grant program. We have reviewed the list and have awarded all the grants from the list.

ADDRESSES: John C. Stremple, Multistate Conservation Grants Program Coordinator, Wildlife and Sport Fish Restoration Program, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Mail Stop WSFR–4020, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: John C. Stremple, at the above address, or at (703) 358–2156 (phone) or *John_Stremple@fws.gov* (email).

SUPPLEMENTARY INFORMATION: The Wildlife and Sport Fish Restoration Programs Improvement Act of 2000 (Improvement Act, Pub. L. 106–408) amended the Pittman-Robertson Wildlife Restoration Act (16 U.S.C. 669 *et seq.*) and the Dingell-Johnson Sport Fish Restoration Act (16 U.S.C. 777 *et seq.*) and established the Multistate Conservation Grant Program. The Improvement Act authorizes us to award grants of up to $3 million annually from funds available under each of the Restoration Acts, for a total of up to $6 million annually. Projects can be funded from both funds depending on the project activities. We may award grants to projects from a list of priority projects recommended to us by the Association of Fish and Wildlife Agencies. The FWS Director, exercising the authority of the Secretary of the Interior, need not fund all projects on the list, but all projects funded must be on the list.

Grantees under this program may use funds for sport fisheries and wildlife management and research projects, boating access development, hunter safety and education, aquatic education, fish and wildlife habitat improvements, and other purposes consistent with the enabling legislation.

To be eligible for funding, a project must benefit fish and/or wildlife conservation in at least 26 States, or in a majority of the States in any one FWS Region, or it must benefit a regional association of State fish and wildlife agencies. We may award grants to a State, a group of States, or one or more nongovernmental organizations. For the purpose of carrying out the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, we may award grants to the FWS, if requested by AFWA, or to a State or a group of States. Also, AFWA requires all project proposals to address its National Conservation Needs, which AFWA announces annually at the same time as its request for proposals. Further, applicants must provide certification that no activities conducted under a Multistate Conservation grant will promote or encourage opposition to regulated hunting or trapping of wildlife, or to regulated angling or taking of fish.

Eligible project proposals are reviewed and ranked by AFWA Committees and interested nongovernmental organizations that represent conservation organizations, sportsmen's and women's organizations, and industries that support or promote fishing, hunting, trapping, recreational shooting, bowhunting, or archery. AFWA's Committee on National Grants recommends a final list of priority projects to the directors of State fish and wildlife agencies for their approval by majority vote. By statute, AFWA then must transmit the final approved list to the FWS for funding under the Multistate Conservation Grant program by October 1 of the fiscal year.

This year, we received a list of 17 projects recommended for funding by AFWA. We have awarded all of them for fiscal year 2013. The list follows:

MULTISTATE CONSERVATION GRANT PROGRAM FY 2013 PROJECTS

ID	*Title*	*Submitter*	*PR funding*[1]	*DJ funding*[2]	*Total 2013 grant request*
1	Coordination of State Fish and Wildlife Agencies' Authority to Manage Wildlife Resources in Concert With Federal Actions Required by International Treaties and Conventions.	AFWA	$93,500	$93,500	$187,000
2	State Fish and Wildlife Agency Director Travel Administration and Coordination.	AFWA	64,075	64,075	128,150
3	Management Assistance Team	AFWA	772,064	772,064	1,544,128
4	Building Capabilities within State Fish and Wildlife Agencies to Engage, Recruit, and Retain New Hunters and Shooters.	Council to Advance Hunting and Shooting Sports.	200,906	0	200,906
5	Coordination of the Industry, Federal and State Agency Coalition.	AFWA	101,850	101,850	203,700
6	Coordination of Farm Bill Program Implementation to Optimize Fish and Wildlife Benefits to the States.	AFWA	203,280	203,280	406,560
7	Implementation of Strategic Tools to Evaluate, Improve, and Develop Hunter Recruitment and Retention.	Wildlife Management Institute.	215,600	0	215,600
8	Promoting Strategic Fish Habitat Conservation through Regionally-coordinated Science and Collaboration.	AFWA	0	490,617	490,617
9	Compilation of Reservoir Habitat Restoration Best Management Practices and Expansion of Local Partnerships.	Arkansas Game and Fish.	0	250,000	250,000
10	Expansion and Coordination of State Agencies' Fish and Wildlife-related Recreation Initiation Programs.	AFWA	112,500	112,500	225,000
11	Understanding Greater Sage-grouse Response to Wind Energy Development at a Landscape Scale.	WAFWA	315,042	0	315,042
12	Explore Bowhunting: National Implementation	ATA	200,000	0	200,00
13	Enhancing Fishing Access Through a National Assessment of Recreational Boating Access.	States Organization for Boating Access.	0	187,996	187,996
14	Improving the Conservation of Fish and Wildlife Populations and their Habitats During Energy Exploration, Development and Transmission.	AFWA	190,020	190,020	380,040
15	Exploring Data Collection and Cost Options for the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation.	ASA	160,500	150,500	321,000
16	2013—Enhancing the Wildlife and Sport Fish Restoration Program.	Wildlife Management Institute.	200,000	200,000	400,000
17	Trailblazer Adventure Program: Involving Youth and Families in Conservation.	U.S. Sportsmen's Alliance Foundation.	70,000	90,000	160,000
	.....		$2,899,337	$2,916,402	$5,815,739

[1] PR Funding: Pitman-Robertson Wildlife Restoration funds.
[2] DJ Funding: Dingell-Johnson Sport Fish Restoration funds.
ASA: American Sport Fishing Association.
ATA: Archery Trade Association.
WAFWA: Western Association of Fish and Wildlife Agencies.

Dated: January 14, 2013.

Dan Ashe,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2013–10002 Filed 4–26–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX13EN05ESB0500]

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of currently approved information Collection, 1028–0096.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is inviting comments on an information collection request (ICR) that we have sent to the Office of Management and Budget (OMB) for review and approval. The ICR concerns the paperwork requirements for the *Department of the Interior Regional Climate Science Centers.* As required by the Paperwork Reduction Act (PRA) of 1995, and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this ICR. This collection is scheduled to expire on April 30, 2013.

DATES: Submit written comments by May 29, 2013.

ADDRESSES: Please submit comments on this information collection directly to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via email: (*OIRA_SUBMISSION@omb.eop.gov*); or by fax (202) 395–5806; and identify your submission with #1028–0096. Please also submit a copy of your comments to Information Collection Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192 (mail); *dgovoni@usgs.gov* (email); or

(703) 648–7195 (fax). Please Reference Information Collection 1028–0096 in the subject line.

FOR FURTHER INFORMATION CONTACT: Nadine Hartke by mail at U.S. Geological Survey, MS 400 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192, or by telephone at 703–648–4607. You may also find information about this ICR at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Title: Department of the Interior Regional Climate Science Centers.

OMB Control Number: 1028–0096.

Type of Request: Notice of an extension of a currently approved information collection.

Respondent Obligation: Required to obtain a benefit.

Abstract: The National Climate Change and Wildlife Science Center (NCCWSC) has the responsibility to manage DOI Climate Science Centers (CSCs) that are co-located at cooperating organizations at non-USGS facilities. The NCCWSC works in close partnership with the climate change science and natural and cultural resource management communities to understand high priority science needs and to develop science information tools that can help resource managers develop strategies for responding to climate change. This program provides funding for researchers through cooperative agreements that involve climate change science as a major component. Eight DOI CSCs have been established. The DOI CSCs and host partnerships have been established on a 5-year renewable basis. The initial information collection activity was performed to identify the preferred locations/institutional partners for Climate Science Centers. This was a full and open competition announced on Grants.gov. Based on this information, CSC host institutions have been identified and have entered cooperative agreements with USGS. At present, information collection activities focus on annual performance and financial reports, required under the cooperative agreements. This information is used to conduct an annual performance evaluation of each CSC's progress in meeting the goals of the agreement.

Frequency of Collection: Once annually.

Estimated Number and Description of Respondents: We expect to receive approximately 40 responses (annual status reports) from a combination of state/local and tribal governments as well as from individuals representing the private sector.

Estimated Annual Responses: 40.

Estimated Annual burden hours: 800.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There is no non-hour cost burden associated with this activity.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Comments: To comply with the public consultation process, on January 11, 2013, we published a **Federal Register** notice (78 FR 2422) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day public comment period, which ended March 12, 2013. In response to our **Federal Register** Notice, we received two comments, which consisted of general invectives about the U.S. Government and did not pertain to this information collection. We again invite comments concerning this information collection on: (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: April 16, 2013.

T. Douglas Beard, Jr.,

Chief, NCCWSC, U.S. Geological Survey.

[FR Doc. 2013–09995 Filed 4–26–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX13EF00CDACQ00]

Notice of an Extension of an Information Collection (1028–0092)

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of an extension of an information collection (1028–0092).

SUMMARY: We (the U.S. Geological Survey) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. To comply with the Paperwork Reduction Act of 1995 (PRA) and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This collection is scheduled to expire on July 31, 2013.

DATES: You must submit comments on or before June 28, 2013.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7195 (fax); or *dgovoni@usgs.gov* (email). Please Reference Information 1028–0092 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information please contact Teresa Dean at (703) 648–4825 or email at *tdean@usgs.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The NGP of the USGS provides funding for the collection of geospatial data to advance the development of *The National Map* and other national geospatial databases. In FY 2010, projects for the collection of orthoimagery and elevation data were funded through the American Recovery and Reinvestment Act. Subject to future funding availability, opportunities for the collection or revision of data including elevation, orthoimagery, hydrography and other layers in the national databases may be possible. We will accept applications from State, local or tribal governments and academic institutions to supplement ongoing data collection activities to respond to an increasing demand for more accurate and current geospatial data. To submit a proposal a completed project narrative and application must be submitted via Grants.gov. Grant recipients must complete a final

technical report at the end of the project period. All application instructions and forms are available on the Internet through Grants.gov (*http://www.grants.gov*). Hard/paper submissions and electronic copies submitted via email will not be accepted under any circumstances. All reports will be accepted electronically via email.

II. Data

OMB Control Number: 1028–0092.

Title: The National Map: Topographic Data Grants Program.

Type of Request: Extension of currently approved collection.

Respondent Obligation: Required to receive benefits.

Frequency of Collection: Annually.

Description of Respondents: State, Local and Tribal Governments, private and non-profit firms, and academic institutions.

Estimated Number of Annual Responses: 40 applications and 20 final reports.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 2,680 hours. We expect to receive approximately 40 applications. It will take each applicant approximately 60 hours to complete the narrative and present supporting documents. This includes the time for project conception and development, proposal writing, reviewing, and submitting the proposal application through Grants.gov (totaling 2,400 burden hours). We anticipate awarding 20 grants per year. The award recipients must submit quarterly and final reports during the project. Within 7 days of the beginning of each quarter, a report must be submitted summarizing the previous quarter's progress. The quarterly report will take at least 1 hour to prepare (totaling 80 burden hours). A final report must be submitted within 90 calendar days of the end of the project period. We estimate that approximately 10 hours will be used to complete the final report (totaling 200 hours).

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

Dated: April 22, 2013.

Julia Fields,

Deputy Director, National Geospatial Program.

[FR Doc. 2013–09996 Filed 4–26–13; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000 L1610000.DP0000]

Call for Nominations for the Dominguez-Escalante National Conservation Area Advisory Council, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: The Secretary of the Interior (Secretary) was directed by the Omnibus Public Lands Management Act of 2009 to establish the Dominguez-Escalante National Conservation Area (D–E NCA) Advisory Council (Council). The 10-member Council was formed in December 2010 to provide recommendations to the Secretary through the Bureau of Land Management (BLM) during the development of a resource management plan (RMP) for the D–E NCA. The call for nominations is to fill 8 of the 10 seats on the Council. The appointments for these eight members are scheduled to expire in November 2013.

DATES: Submit nomination packages on or before May 29, 2013.

ADDRESSES: Send completed Council nominations to D–E NCA Interim Manager, Grand Junction Field Office, 2815 H Road, Grand Junction, CO 81506. Nomination forms may be obtained at the Grand Junction Field Office at the above address, at the BLM Uncompahgre Field Office, 2465 S. Townsend Ave, Montrose, CO 81401, or online at *http://www.blm.gov/co/st/en/nca/denca/denca_rmp/DENCA_Resource_Advisory_Council.html*.

FOR FURTHER INFORMATION CONTACT: Katie A. Stevens, Field Manager, Grand Junction Field Office, 970–244–3000, *kasteven@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The D–E NCA and Dominguez Canyon Wilderness, located within the D–E NCA, were established by the Omnibus Public Land Management Act of 2009, Public Law 111–11 (Act). The D–E NCA is comprised of approximately 210,012 acres of public land, including approximately 66,280 acres designated as Dominguez Canyon Wilderness located in Delta, Montrose and Mesa counties, Colorado. The purpose of the D–E NCA is to conserve and protect the unique and important resources and values of the land for the benefit and enjoyment of present and future generations. These resources and values include the geological, cultural, archaeological, paleontological, natural, scientific, recreational, wilderness, wildlife, riparian, historical, educational, and scenic resources of the public lands; and the water resources of area streams based on seasonally available flows that are necessary to support aquatic, riparian, and terrestrial species and communities. According to the Act, the 10-member council is to include, to the extent practicable:

1. One member appointed after considering the recommendations of the Mesa County Commission;

2. One member appointed after considering the recommendations of the Montrose County Commission;

3. One member appointed after considering the recommendations of the Delta County Commission, (This member was replaced already recently and therefore their term will not expire in November 2013);

4. One member appointed after considering the recommendations of the permittees holding grazing allotments within the D–E NCA or the wilderness; and

5. Six members who reside in, or within reasonable proximity to Mesa, Delta or Montrose counties, Colorado, with backgrounds that reflect:

a. The purposes for which the D–E NCA or wilderness was established; and

b. The interests of the stakeholders that are affected by the planning and management of the D–E NCA and wilderness. (The Council member representing wildlife interests was replaced already recently and therefore their term will not expire in November 2013.)

Any individual or organization may nominate one or more persons to serve on the Council. Individuals may nominate themselves for Council membership. The Obama Administration prohibits individuals who are currently federally-registered lobbyists from serving on all Federal Advisory Committee Act (FACA) and non-FACA boards, committees or councils. Nomination forms may be obtained from the BLM Grand Junction or Uncompahgre Field Offices, or may be downloaded from the following Web site: *http://www.blm.gov/co/st/en/nca/denca/denca_rmp/DENCA_Resource_Advisory_Council.html*.

Nomination packages must include a completed nomination form, letters of reference from the represented interests or organizations, and any other information relevant to the nominee's qualifications. Letters of reference can be from an organization or from anyone who is familiar with the nominee's ability to speak as an expert on the topic of interest. Nominations are open to new and currently seated members. The Grand Junction and Uncompahgre field offices will review the nomination packages in coordination with the affected counties and the Governor of Colorado before forwarding recommendations to the Secretary, who will make the appointments.

The Council shall be subject to the FACA, 5 U.S.C. App. 2; and the Federal Land Management Policy Act of 1976, 43 U.S.C. 1701 *et seq.*

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2013–09978 Filed 4–26–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCOF00000 L16520000.XX0000]

Notice of Meeting, Rio Grande Natural Area Commission

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Rio Grande Natural Area Commission will meet as indicated below.

DATES: The meeting will be held from 10 a.m. to 3 p.m. on May 29, 2013.

ADDRESSES: Rio Grande Water Conservation District, 10900 East U.S. Highway 160, Alamosa, CO 81101.

FOR FURTHER INFORMATION CONTACT: Denise Adamic, Public Affairs Specialist, BLM Front Range District Office, 3028 East Main St., Cañon City, CO 81212. Phone: (719) 269–8553. Email: *dadamic@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Rio Grande Natural Area Commission was established in the Rio Grande Natural Area Act (16 U.S.C. 460rrr–2). The nine-member Commission advises the Secretary of the Interior, through the BLM, concerning the preparation and implementation of a management plan for non-Federal land in the Rio Grande Natural Area, as directed by law. Planned agenda topics for this meeting include: discussing public involvement thus far for the management plan, a presentation by the BLM on cultural resource reviews, subcommittee reports of work with the new writer/editor and plans for future meetings. The public may offer oral comments at 10:15 a.m. or written statements, which may be submitted for the commission's consideration. Please send written comments to Denise Adamic at the address above by May 15, 2013. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the meeting will be maintained in the San Luis Valley Field Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Meeting minutes and agenda are also available at: *www.blm.gov/co/st/en/fo/slvfo/rio_grande_natural.html*.

Dated: April 15, 2013.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2013–09405 Filed 4–26–13; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVS00560 L58530000 EU0000 241A; N–81959, et al.; 13–08807; MO# 4500049637; TAS: 14X5232]

Notice of Realty Action: Competitive, Sealed-Bid, Spring SNPLMA Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer nine parcels of public land totaling approximately 133.57 acres in the Las Vegas Valley by competitive, sealed-bid sale, at not less than the appraised fair market values (FMV). The sale parcels will be offered for sale pursuant to the Southern Nevada Public Land Management Act of 1998 (SNPLMA), as amended. The sale would be subject to the applicable provisions of Section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA), and BLM land sale regulations at 43 CFR 2710. The BLM has also completed a Determination of National Environmental Policy Act Adequacy (DNA).

DATES: Interested parties may submit written comments regarding the proposed sale of public land until June 13, 2013. The public sale would not be held prior to June 28, 2013 at the BLM Las Vegas Field Office at the address below. The FMV for the parcels, the period to submit sealed-bids, and the sale date will be announced in local and online media at least 30 days prior to the sale.

ADDRESSES: Mail written comments and sealed bids to the BLM, Las Vegas Field Office, Assistant Field Manager, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130.

FOR FURTHER INFORMATION CONTACT: Manuela Johnson at email: *manuela_johnson@blm.gov*, or

telephone: 702–515–5224. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours. For general information on previous BLM public land sales, go to: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html*.

SUPPLEMENTARY INFORMATION: The BLM proposes to offer nine parcels of public land in the southwest area of the Las Vegas Valley. The parcels are located between Durango Drive and Jones Boulevard just north of Blue Diamond Road. The subject public lands are described as:

Mount Diablo Meridian

T. 22 S., R. 60 E.,
Sec. 14, SW¼NE¼SE¼,
N½SE¼NW¼SE¼,
N½SW¼NW¼SE¼,
SW¼SW¼NW¼SE¼;
Sec. 15, NE¼SW¼NW¼,
E½NW¼SW¼NW¼,
W½SE¼SW¼NW¼;
Sec. 16, NW¼NE¼NE¼SE¼,
NW¼NE¼SE¼, NE¼NE¼NW¼SE¼,
S½SW¼NE¼SE¼,
E½NE¼NW¼SE¼SE¼,
E½NW¼NW¼SE¼SE¼,
SW¼NE¼SE¼SE¼,
SE¼NW¼SE¼SE¼,
S½SE¼NW¼SE¼,
SW¼SW¼NW¼SE¼,
N½NE¼SW¼SE¼,
NE¼NW¼SW¼SE¼,
SE¼NE¼SW¼SE¼,
N½NE¼SE¼SW¼SE¼,
E½NE¼NE¼SW¼,
E½NW¼NE¼NE¼SW¼,
N½SE¼NE¼SW¼, E½SE¼SE¼SW¼,
SW¼SE¼SE¼SW¼;
Sec. 23, N½SW¼NW¼SW¼NW¼;
Sec. 27, S½NW¼NE¼NW¼,
N½SW¼NE¼NW¼,
SW¼SW¼NE¼NW¼,
SE¼SE¼NW¼NW¼,
S½NE¼NW¼NW¼,
SE¼NW¼NW¼NW¼,
NE¼NE¼SW¼NW¼.

The area described contains 133.57 acres, more or less, in Clark County.

The sale parcels range from 1.07 acres to 31.25 acres in size: N–81959 contains 2.50 acres; N–91125 contains 1.07 acres; N–91529 contains 22.50 acres; N–91530 contains 20.00 acres; N–91531 contains 15.00 acres; N–91532 contains 31.25 acres; N–91537, 11.25 acres; N–91538, 7.50 acres; N–91539, 22.50 acres. A sales matrix is available on the BLM Web site at: *http://www.blm.gov/snplma*. The sales matrix provides information specific to each sale parcel such as: parcel number, legal description, encumbrances, and acreage.

This proposed competitive, sealed-bid sale is in conformance with the BLM Las Vegas Resource Management Plan (RMP) and decision LD–1, approved by Record of Decision on October 5, 1998, and is in compliance with Section 203 of FLPMA. The proposed sale parcels were also analyzed in the Las Vegas Valley Disposal Boundary Environmental Impact Statement and approved by Record of Decision on December 23, 2004, and a site specific DNA document numbered DOI–BLM–NV–S010–2012–0106–DNA.

Sale procedures: Sealed bids must be presented for the sale parcels described above. Sealed-bid envelopes must be clearly marked on the front lower left corner with ''Competitive Sealed-Bid Land Sale, 2013.'' Sealed bids for the sale must also include a certified check, postal money order, bank draft, or cashier's check made payable to the ''Department of the Interior—Bureau of Land Management'' in an amount not less than 20 percent of the total amount bid. Personal or company checks will not be accepted. The sealed-bid envelope must contain a 20-percent bid deposit, and a completed and signed ''Certificate of Eligibility'' form stating the name, mailing address, and telephone number of the entity or person submitting the bid. Certificate of Eligibility forms are available at the BLM Las Vegas Field Office at the address listed in the **ADDRESSES** section and on the BLM Web site at: *http://www.blm.gov/nv/st/en/snplma/Land_Auctions.html*. Pursuant to 43 CFR 2711.3–1(c), if two or more sealed-bid envelopes containing valid bids of the same amount are received, the determination of the highest bid would be by supplemental biddings. Supplemental bidding may be oral or sealed as designated by the authorized officer. Sealed bids would be opened and recorded on the sale date to determine the high bids among the qualified bids received. Bids for less than the federally approved FMV will not be qualified. The BLM will send the successful bidder(s) a high bidder letter with detailed information for full payment.

All funds submitted with unsuccessful bids will be returned to the bidders or their authorized representative upon presentation of acceptable photo identification at the BLM Las Vegas Field Office or by certified mail. If a bidder purchases a parcel and defaults, the BLM may retain the bid deposit and cancel the sale of that parcel. If a high bidder is unable to consummate the transaction for any other reasons, the second highest bid may be considered. If there are no acceptable bids, the parcels may remain available for sale at a future date in accordance with competitive, sale procedures without further legal notice.

Federal law requires that bidders must be: (1) United States citizens 18 years of age or older; (2) A corporation subject to the laws of any State or of the United States; (3) An entity including, but not limited to, associations or partnerships capable of acquiring and owning real property, or interests therein, under the laws of the State of Nevada; or (4) A State, State instrumentality, or political subdivision authorized to hold real property. United States citizenship is evidenced by presenting a birth certificate, passport, or naturalization papers. Failure to submit the above requested documents to the BLM within 30 days from receipt of the high-bidder letter would result in cancellation of the sale of the parcel and forfeiture of the bid deposit. The successful bidder will be allowed 180 days from the date of the sale to submit the remainder of the full purchase price.

Publication of this Notice in the **Federal Register** segregates the subject lands from all forms of appropriation under the public land laws, including the mining laws. Any subsequent application will not be accepted, will not be considered as filed, and will be returned to the applicant if the notice segregates from the use applied for in the application. The segregative effect of this Notice terminates upon issuance of a patent or other document of conveyance to such lands; publication in the **Federal Register** of a termination of the segregation; or 2 years after the date of this publication, whichever occurs first. The segregation period may not exceed 2 years unless extended by the BLM State Director, Nevada, in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

All minerals for the sale parcels will be reserved to the United States. The patents, when issued, will contain a mineral reservation to the United States for all minerals.

The parcels are subject to limitations prescribed by law and regulation, and certain encumbrances in favor of third parties. Prior to patent issuance, a holder of any right-of-way within the sale parcels will be given the opportunity to amend their right-of-way for conversion to a new term, including perpetuity, if applicable, or conversion to an easement. The BLM will notify valid existing right-of-way holders of record of their ability to convert their compliant right-of-way to a perpetual right-of-way or easement. In accordance

with Federal regulations at 43 CFR 2807.15, once notified, each valid holder may apply for the conversion of their current authorization.

The following numbered terms and conditions will appear on the conveyance documents for the sale parcels:

1. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior are reserved to the United States, together with all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. A right-of-way for Federal aid highway (Blue Diamond Road) purposes reserved to the Federal Aid Highway Administration, its successors and assigns, by right-of-way No. Nev–012728, pursuant to the Act of August 27, 1958 (23 U.S.C. 107(D)) within parcel N–91125.

4. The parcels are subject to valid existing rights.

5. The parcels are subject to reservations for road, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' transportation plans.

6. By accepting patent, the patentee agrees to indemnify, defend and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or any third-party, arising out of, or in connection with, the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of Federal, State, and local laws and regulations applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, damages of any kind incurred by the United States; (4) Other releases or threatened releases on, into or under land, property and other interests of the United States by solid or hazardous waste(s) and/or hazardous substances(s), as defined by Federal or State environmental laws; (5) Other activities by which solid or hazardous substances or wastes, as defined by Federal and State environmental laws were generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; and, (6) Natural resource damages as defined by Federal and State law. This covenant shall be construed as running with the patented real property, and may be enforced by the United States in a court of competent jurisdiction.

7. Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988, 100 Stat. 1670, notice is hereby given that the described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for 1 year or more, nor had any hazardous substances been disposed of or released on the subject property.

No warranty of any kind, express or implied, is given by the United States as to the title, whether or to what extent the land may be developed, its physical condition, future uses, or any other circumstance or condition. The conveyance of any parcel will not be on a contingency basis. However, to the extent required by law, the parcel is subject to the requirements of Section 120(h) of the CERCLA.

Unless other satisfactory arrangements are approved in advance by a BLM authorized officer, conveyance of title shall be through the use of escrow. Designation of the escrow agent shall be through mutual agreement between the BLM and the prospective patentee, and costs of escrow shall be borne by the prospective patentee. Requests for all escrow instructions must be received by the BLM Las Vegas Field Office prior to 30 days before the prospective patentee's scheduled closing date. There are no exceptions.

All name changes and supporting documentation must be received at the BLM Las Vegas Field Office 30 days from the date on the high-bidder letter by 4:30 p.m., Pacific Time. Name changes will not be accepted after that date. To submit a name change, the apparent high bidder must submit the name change in writing on the Certificate of Eligibility form to the BLM Las Vegas Field Office.

The remainder of the full bid price for the parcel must be received no later than 4:30 p.m., Pacific Time, within 180 days following the day of the sale. Payment must be submitted in the form of a certified check, U.S. postal money order, bank draft, cashier's check, or made available by electronic fund transfer made payable in U.S. dollars to the ''Department of the Interior, Bureau of Land Management'' to the BLM Las Vegas Field Office. Personal or company checks will not be accepted.

Arrangements for electronic fund transfer to BLM for payment of the balance due must be made a minimum of 2 weeks prior to the payment date. Failure to pay the full bid price prior to the expiration of the 180th day will disqualify the apparent high bidder and cause the entire 20 percent bid deposit to be forfeited to the BLM. Forfeiture of the 20 percent bid deposit is in accordance with 43 CFR 2711.3–1(d). No exceptions will be made. The BLM cannot accept the remainder of the bid price after the 180th day of the sale date.

The BLM will not sign any documents related to 1031 Exchange transactions. The timing for completion of an exchange is the bidder's responsibility. The BLM cannot be a party to any 1031 Exchange.

In accordance with 43 CFR 2711.3–1(f), within 30 days the BLM may accept or reject any or all offers to purchase, or withdraw any parcel of land or interest therein from sale, if, in the opinion of a BLM authorized officer, consummation of the sale would be inconsistent with any law, or for other reasons as may be provided by applicable law or regulations. No contractual or other rights against the United States may accrue until the BLM officially accepts the offer to purchase and the full bid price is paid.

On publication of this Notice and until completion of the sale, the BLM is no longer accepting land use applications affecting the parcel identified for sale. However, land use applications may be considered after the sale if the parcel is not sold. The parcel may be subject to land use applications received prior to publication of this Notice if processing the application would have no adverse effect on the marketability of title, or the FMV of the parcel. Information concerning the sale, encumbrances of record, appraisals, reservations, procedures and conditions, CERCLA, and other environmental documents that may appear in the BLM public files for the proposed sale parcels are available for review during business hours, 7:30 a.m. to 4:30 p.m., Pacific Time, Monday through Friday, at the

BLM Las Vegas Field Office, except during Federal holidays.

In order to determine the FMV through appraisal, certain extraordinary assumptions and hypothetical conditions may have been made concerning the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this Notice, the BLM advises that these assumptions may not be endorsed or approved by units of local government.

It is the buyer's responsibility to be aware of all applicable Federal, State, and local government laws, regulations and policies that may affect the subject lands, including any required dedication of lands for public uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. When conveyed out of Federal ownership, the lands would be subject to any applicable laws, regulations, and policies of the applicable local government for proposed future uses. It is the responsibility of the purchaser to be aware through due diligence of those laws, regulations, and policies, and to seek any required local approvals for future uses. Buyers should also make themselves aware of any Federal or State law or regulation that may impact the future use of the property. Any land lacking access from a public road or highway would be conveyed as such, and future access acquisition would be the responsibility of the buyer.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including any personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Authority: 43 CFR 2711.1–2.

Christina Price,

Acting Assistant Field Manager, Division of Lands.

[FR Doc. 2013–09979 Filed 4–26–13; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[MMAA104000]

Outer Continental Shelf Scientific Committee; Announcement of Plenary Session

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Meeting.

SUMMARY: The Outer Continental Shelf (OCS) Scientific Committee (SC) will meet at the Marriott Downtown New Orleans Convention Center.

DATES: Tuesday, May 14, 2013, Plenary Session from 9:00 a.m. to noon and Discipline Breakout Groups from 1:30 p.m. to 5:00 p.m.; Wednesday, May 15, 2013, Discipline Breakout Groups from 8:30 a.m. to 5:00 p.m.; and on Thursday, May 16, 2013, Plenary Session from 10:00 a.m. to 4:30 p.m.

ADDRESSES: 859 Convention Center Boulevard, New Orleans, Louisiana 70130, telephone (504) 613–2888.

FOR FURTHER INFORMATION CONTACT: A copy of the draft agenda will be located on the OCS Scientific Committee's Web site at: *http://www.boem.gov/About-BOEM/Public-Engagement/Federal-Advisory-Committees/OCS-Scientific-Committee/Index.aspx*, or can be requested from BOEM by emailing Ms. Phyllis Clark at *Phyllis.Clark@boem.gov*. Other inquiries concerning the OCS SC meeting should be addressed to Dr. Rodney Cluck, Executive Secretary to the OCS SC, Bureau of Ocean Energy Management, 381 Elden Street, Mail Stop HM–3115, Herndon, Virginia 20170–4817, or by calling (703) 787–1087 or via email at *Rodney.Cluck@boem.gov*.

SUPPLEMENTARY INFORMATION: The OCS SC will provide advice on the feasibility, appropriateness, and scientific value of the OCS Environmental Studies Program to the Secretary of the Interior through the Director of BOEM. The SC will review the relevance of the research and data being produced to meet BOEM's scientific information needs for decision making and may recommend changes in scope, direction, and emphasis.

On Tuesday, May 14, the Committee will meet in plenary session from 9:00 a.m. to noon. Mr. Robert LaBelle, the Acting Chief Environmental Officer, will address the Committee on issues and challenges BOEM is facing and will present recent accomplishments of BOEM. There will be an update from each region's Environmental Studies Chief on OCS activities and current issues. Discipline breakout groups (i.e., biology/ecology, physical sciences, and social sciences) will meet from 1:30 p.m. to 5:00 p.m. to review the specific research plans for BOEM's regional offices for Fiscal Years 2014 and 2015.

On Wednesday, May 15, the Committee will meet in discipline breakout groups to continue their review of the specific research plans from 8:30 a.m. to 5:00 p.m.

On Thursday, May 16, from 10:00 a.m. to 11:45 a.m., the Committee will meet in plenary session for reports of the individual discipline breakout sessions of the previous day. Continuation of the individual discipline breakout sessions will resume at 1:00 p.m. until 3:00 p.m. Public comment will be held from 3:00 p.m. to 3:30 p.m. and Committee business will be discussed from 3:30 p.m. to 4:30 p.m.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: April 22, 2013.

Robert P. LaBelle,

Acting Chief Environmental Officer, Bureau of Ocean Energy Management.

[FR Doc. 2013–10008 Filed 4–26–13; 8:45 am]

BILLING CODE 4310–MR–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (13–051)]

NASA Advisory Council; Aeronautics Committee; Unmanned Aircraft Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Unmanned Aircraft Systems (UAS) Subcommittee of the Aeronautics Committee of the NASA Advisory Council. The meeting will be held for the purpose of soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Tuesday, May 21, 2013, 8:00 a.m. to 4:00 p.m., Local Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters,

Room 6E40, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda L. Mulac, Executive Secretary for the UAS Subcommittee of the Aeronautics Committee, National Aeronautics and Space Administration Headquarters, Washington, DC 20546, (202) 358–1578, or *brenda.l.mulac@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. Any person interested in participating in the meeting by WebEx and telephone should contact Ms. Brenda L. Mulac at (202) 358–1578 for the web link, toll-free number and passcode. The agenda for the meeting includes the following topics:

- Status of NASA UAS Integration into the National Airspace System (NAS) Phase 2 Activity Selection
- Discussion of Future Follow on Projects for UAS and Autonomy

It is imperative that these meetings be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ms. Brenda Mulac at fax 202–358–3602 by no less than 8 working days prior to the meeting. U.S. citizens and green card holders are requested to submit their name and affiliation 3 working days prior to the meeting to Ms. Brenda Mulac at fax 202–358–3602. For questions, please call Ms Brenda L. Mulac at (202) 358–1578.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–10001 Filed 4–26–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: AdvLIGO Construction Review Site Visit at Livingston Observatory for Physics, #1208

Date and Time: Tuesday, April 30, 2013; 8:00 a.m.–6:00 p.m., Wednesday, May 1, 2013, 8:00 a.m.–5:00 p.m., Thursday, May 2, 3013, 8:00 a.m.–3:00 p.m.

Place: LIGO site at Livingston, LA.

Type of Meeting: Partially Closed.

Contact Person: Mark Coles, Director of Large Facilities, Division of Physics, National Science Foundation, (703) 292–4432.

Purpose of Meeting: To provide an evaluation of the project construction for implementation of the AdvLIGO project to the National Science Foundation.

Agenda

Tuesday, April 30, 2013

8:00 a.m.–8:30 p.m. Closed—Panel Executive Session
8:30 a.m.–12:15 p.m. Open—Introduction, Charge, Context and Transition Interferometer integration
12:15 Lunch
1:00 p.m.–3:00 p.m. Open—Tour
3:00 p.m.–4:15 p.m. Open—Acceptance, Safety, QA, Risks, Vendor Oversight
4:30 p.m.–6:00 p.m. Closed—Panel Executive Session

Wednesday, May 1, 2013

8:00–8:30 a.m. Closed—Panel Executive Session
8:30–12:30 p.m. Open—Breakout Sessions
12:30 Lunch
1:15 p.m.–4:00 p.m. Open—Plenary Final Session
4:00 p.m.–5:00 p.m. Closed Panel Executive Session

Thursday, May 2, 2013

8:00 a.m.–2:00 p.m. Closed—Panel Executive Session
2:00 p.m.–3:00 p.m. Open—Closing Address

Reason for Late Notice: Due to unforeseen scheduling complications and the necessity to proceed with the review.

Reason for Closing: The proposal contains proprietary or confidential material, including technical information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(2)(4) and (6) of the Government in the Sunshine Act.

Dated: April 24, 2013.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2013–10007 Filed 4–26–13; 8:45 am]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69433; File No. 4–661]

Credit Ratings Roundtable

AGENCY: Securities and Exchange Commission.

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: The Securities and Exchange Commission will host a one day roundtable to discuss various matters related to credit ratings. The roundtable will consist of three panels. The first panel will examine issues in connection with the possibility of developing a credit rating assignment system. The second panel will discuss the effectiveness of the Commission's current system under the Securities Exchange Act of 1934 for encouraging unsolicited ratings of asset-backed securities. The third panel will focus on other potential alternatives to the current issuer pay business model.

The roundtable discussion will be held in Room L–006 (the multi-purpose room) at the Securities and Exchange Commission's headquarters located at 100 F Street NE., in Washington, DC 20549. The public is invited to observe the roundtable discussion. Seating will be available on a first-come, first-served basis. The roundtable discussion also will be available via webcast on the Commission's Web site at *www.sec.gov*.

DATES: The roundtable discussion will take place on May 14, 2013. The Commission will accept comments regarding issues addressed at the roundtable until June 3, 2013.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number 4–661 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number 4–661. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Scott Davey at (212) 336–0075, Office of Credit Ratings, Securities and Exchange Commission, 3 World Financial Center, New York, NY 10281–1022.

Dated: April 23, 2013.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–09931 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 2, 2013 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: April 25, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10196 Filed 4–25–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 25, 2013 at 4:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: April 25, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10195 Filed 4–25–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69428; File No. SR–NYSEMKT–2013–25]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change To Amend NYSE MKT Rule 104—Equities To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers To Make Exchange Systems Available to DMMs That Would Provide DMMs With Certain Market Information, To Amend the Exchange's Rules Governing the Ability of DMMs To Provide Market Information To Floor Brokers, and To Make Conforming Amendments to Other Rules

April 23, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 9, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On April 18, 2013, the Exchange filed Partial Amendment No. 1 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE MKT Rule 104—Equities to codify certain traditional Trading Floor [5] functions that may be performed by

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Partial Amendment No., 1, the Exchange filed the Exhibit 3 which was not included in the April 9, 2013 filing.

[5] NYSE MKT Rule 6A—Equities defines the term ''Trading Floor'' to mean, in relevant part, ''the restricted-access physical areas designated by the Exchange for the trading of securities.''

Designated Market Makers (''DMMs''),[6] to make Exchange systems available to DMMs that would provide DMMs with certain market information, to amend the Exchange's rules governing the ability of DMMs to provide market information to Floor brokers, and to make conforming amendments to other rules. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE MKT Rule 104—Equities to codify certain traditional Trading Floor functions that may be performed by DMMs; these functions were previously described in the Exchange's *Floor Official Manual.* In addition, the Exchange proposes to amend its rules to make Exchange systems available to DMMs that would provide DMMs with certain market information about securities in which the DMM is registered. The Exchange also proposes to amend its rules governing the ability of DMMs to make available certain order and market information to Floor brokers provided that the market participant entering the order had not opted out of such availability. Finally, the Exchange proposes to make clarifying and conforming amendments to other rules.[7]

As described below, the Exchange believes that enabling DMMs to perform certain additional Trading Floor functions previously performed by specialists would improve the quality of certain interactions experienced by investors (specifically, by increasing the likelihood of transaction cost-reducing block transactions).

Specifically, on October 31, 2011, the New York Stock Exchange LLC (''NYSE'') and NYSE MKT each filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[8] and Rule 19b–4 thereunder,[9] proposed rule changes to amend Rule 104. The proposals were published for comment in the **Federal Register** on November 17, 2011.[10] The Commission received no comment letters on the Proposals. On December 22, 2011, the Commission extended the time period to February 15, 2012, in which either to approve the Proposals, disapprove the Proposals, or to institute proceedings to determine whether to disapprove the Proposals.[11] The Commission received no comment letters on the Proposals during the extension. On February 15, 2012, the Commission issued an order instituting proceedings to determine whether to disapprove the Proposals.[12] The Commission received six comment letters supporting the Proposals after the Commission instituted proceedings to determine whether to disapprove the Proposals. After the Commission issued a notice of designation of longer period for Commission action on May 14, 2012,[13] the Commission disapproved the proposed rule changes on July 13, 2012.[14]

As discussed more fully below, the Commission's disapproval was based principally on concerns related to the fairness and competitive impact of providing certain order information to Floor participants. The Exchange is submitting the present filing to provide more detailed support demonstrating the consistency of the proposed rule change in general, and the provision of such order information in particular, with Section 6(b)(5) of the Act and to otherwise address the concerns raised by the Commission in its disapproval order. The Exchange believes that the Commission's application of the Act's fairness and competition-related standards must take specific account of the transformational competitive dynamics that have reshaped the role of the Floor over the last decade, particularly with the potential of the proposal to improve size interactions and reduce transaction costs for the public. Accordingly, this filing: (1) Explains the mechanics and operation of the proposal; (2) provides an overview of the reshaped competitive context within which the Floor operates; and (3) offers three detailed scenarios illustrating the potential benefits to the public of making the proposed order information available to Floor participants and a demonstration of how the proposed availability would improve error resolution. The improved order interactions illustrated in the scenarios and the demonstration of improved error resolution explain in detail why the proposed consensual availability of the order information in question should apply not only to orders entered on the Floor, but also to orders entered by off-Floor participants.

DMM Trading Floor Functions

On October 24, 2008, the Commission approved, as a pilot program, certain core rules that govern the current operation of the Exchange.[15] These rules embody the Exchange's ''New Market Model.'' The New Market Model pilot rules include NYSE Rule 104, which sets forth certain affirmative obligations of DMMs, the category of market participant that replaced specialists. DMMs have obligations with respect to the quality of the markets in securities to which they are assigned that are similar to certain obligations formerly held by specialists. NYSE MKT adopted amendments to implement the New Market Model, including amendments to NYSE MKT Rule 104—Equities, on November 26, 2008.[16]

In addition to their trading-related functions and obligations, DMMs, under the New Market Model, provide support on the Trading Floor to assist in the efficient operation of the Exchange market and maintain fair and orderly markets. These Trading Floor functions were performed by specialists before the

[6] NYSE MKT Rule 2(i)—Equities defines the term ''DMM'' to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE MKT Rule 2(j)—Equities defines the term ''DMM unit'' as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE MKT Rule 98—Equities.

[7] The Exchange's affiliate, New York Stock Exchange LLC, has submitted substantially the same proposed rule change to the Commission. *See* SR–NYSE–2013–21.

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] *See* Securities Exchange Act Release Nos. 65735 (November 10, 2011), 76 FR 71405 (SR–NYSEAmex–2011–86) (''NYSE Amex Notice'') and 65736 (November 10, 2011), 76 FR 71399 (SR–NYSE–2011–56) (''NYSE Notice'').

[11] *See* Securities Exchange Act Release No. 66036, 76 FR 82011 (December 29, 2011).

[12] *See* Securities Exchange Act Release No. 66397, 77 FR 10586 (February 22, 2012).

[13] *See* Securities Exchange Act Release No. 66981, 77 FR 29730 (May 18, 2012).

[14] *See* Securities Exchange Act Release No. 67437, 77 FR 42525 (July 13, 2012) (''Disapproval Order'').

[15] Securities Exchange Act Release No. 58845, 73 FR 64379 (October 29, 2008) (''New Market Model Release'').

[16] *See* Securities Exchange Act Release No. 59022 (November 26, 2008), 73 FR 73683 (December 3, 2008) (SR–NYSEALTR–2008–10).

New Market Model was adopted, and described in the Exchange's *Floor Official Manual*.[17] Under the New Market Model, there is a continued need for DMMs to perform these Trading Floor functions. The Exchange proposes to add new subparagraph (j)(i) to Rule 104—Equities to codify these historic functions.[18]

In particular, DMMs perform four categories of Trading Floor functions: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel, including managing trading crowd activity and facilitating Floor broker executions at the post; (2) facilitating Floor broker interactions, including either participating as a buyer or seller, and appropriately communicating to Floor brokers the availability of other Floor broker contra-side interest; (3) assisting Floor brokers with respect to their orders, including resolving errors and, for example, inputting Floor interest into Exchange systems in the event of handheld technology outages; and (4) researching the status of orders or questioned trades. The current performance of these four functions can be illustrated as follows:

First, a DMM may maintain order among Floor brokers manually trading at the DMM's assigned panel. For example, where there is significant agency interest in a security, the DMM may help Floor Officials maintain order by managing trading crowd activity and facilitating the execution of one or more Floor broker's orders trading at the post.

Second, a DMM may bring Floor brokers together to facilitate trading, which may include the DMM acting as a buyer or seller. This function is consistent with the floor-based nature of the Exchange's hybrid market. For example, if a DMM is aware that a Floor broker representing buying interest inquired about selling interest in one of his or her assigned securities and later a Floor broker representing selling interest makes an inquiry about buying interest, the assigned DMM may inform the Floor broker representing the buying interest of the other Floor broker's selling interest. In addition, the DMM itself may provide contra-side interest to a Floor broker representing interest at the post.

Third, DMMs may assist Floor brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker. For example, if a Floor broker's handheld device is not operational, the DMM may assist the Floor broker by entering or canceling broker interest on the Floor broker's behalf.[19]

Fourth, DMMs may research the status of orders or questioned trades. DMMs may do so on their own initiative or at the request of the Exchange or a Floor broker when a Floor broker's hand-held device is not operational, when there is activity indicating that a potentially erroneous order was entered or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.

DMM Access to Exchange Systems

The Exchange proposes to amend Rule 104—Equities to add new subparagraph (j)(ii), which would state that the Exchange may make systems available to a DMM at the post that display the following types of information about securities in which the DMM is registered: (a) Aggregated information about buying and selling interest; [20] (b) disaggregated information about the price and size of any individual order or Floor broker agency interest file, also known as ''e-Quotes,'' except that Exchange systems would not make available to DMMs information about any order or e-Quote, or portion thereof, that a market participant has elected not to display to a DMM; and (c) post-trade information. For the latter two categories, the DMM would have access to entering and clearing firm information and, as applicable, the badge number of the Floor broker representing the order. The systems would not contain any information about the ultimate customer (*i.e.,* the name of the member or member organization's customer) in a transaction. Importantly, aggregated information at each price level about buying and selling interest that is not marked dark is already visible to DMMs. Similarly, aggregated information for interest not marked dark is visible to any market participant beyond the Floor via OpenBook.[21]

Under the proposed rule change, Exchange systems would make available to DMMs disaggregated information about the following interest in securities in which the DMM is registered: (a) The price and size of all displayable interest submitted by off-Floor participants; and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.[22] Importantly, both Floor brokers and off-Floor participants would have the continued ability to enter partially or completely ''dark'' orders that are not visible to the DMM, which would prevent any communication about such interest between the DMM and Floor brokers. The Exchange believes that it is appropriate to provide DMMs with this disaggregated order information because the information will assist DMMs in carrying out their Trading Floor functions. In addition to the potential for improved interaction of larger-sized orders illustrated by the three scenarios and related information below, providing DMMs with access to the disaggregated order information will contribute to the DMMs' ability to carry out their responsibility for managing the auction market process at the Exchange, which includes the function of bringing buyers and sellers together to facilitate trading. The proposed rule change would specifically prohibit DMMs from using any trading information available to them in Exchange systems, including disaggregated order information, in a manner that would violate the Exchange rules or federal securities laws or regulations.

[17] *See 2004 Floor Official Manual, Market Surveillance June 2004 Edition,* Chapter Two, Section I.A. at 7 (''specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities''), Section I.B.3. at 10–11 (''[i]n opening and reopening trading in a listed security, a specialist should * * * [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate'' and ''[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary''), Section I.B.4. at 11 (''In view of the specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows * * * [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.''), and Section I.B.5. at 12 (A specialist should ''[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors.''). Relevant excerpts of the *2004 Floor Official Manual* are attached as Exhibit 3 of this filing.

[18] The Exchange proposes to redesignate the rule text currently set forth in section (j) as section (k) of Rule 104—Equities.

[19] The Exchange maintains a full audit trail of all Floor broker orders, including information reflecting entry, modification, cancellation, and execution of such orders.

[20] Exchange systems make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-Floor participants; (b) all Minimum Display Reserve Orders, including the reserve portion; (c) all displayable Floor broker agency interest files (''e-Quotes''); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the Floor broker elects to exclude that reserve quantity from availability to the DMM.

[21] Floor brokers currently have the ability to make an order visible to the DMM but not in OpenBook. They would maintain that ability under the proposed rule.

[22] The Exchange previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchange stopped making such information available to DMMs on January 19, 2011. *See* Information Memo 11–03.

The Exchange believes that the proposed rule change would contribute substantially to the fair and orderly operation of the Exchange Trading Floor. As illustrated in detail below, the proposed consensual availability of the order information in question offers the potential for improved error resolution. DMM assistance at the post through the performance of the Trading Floor functions continues to be an invaluable resource to minimize any disruption to the market, particularly if the Exchange or a customer is experiencing a systems issue; the Exchange systems that provide disaggregated order information play a pivotal role in that assistance. Allowing DMMs to have access to those Exchange systems to perform the Trading Floor functions is more efficient than diverting Exchange resources to attend to individual Floor broker issues, particularly when the DMMs are ready and able to perform the same functions.

Ability of DMMs To Provide Market Information on the Trading Floor

The Exchange proposes to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and visitors on the Trading Floor. Specifically, Rule 104(j)(iii)—Equities would permit a DMM to provide the market information to which he or she has access under proposed Rule 104(j)(ii)—Equities to: (1) A Floor broker in response to an inquiry in the normal course of business; or (2) a visitor to the Trading Floor for the purpose of demonstrating methods of trading. This aspect of the proposal builds on and modifies current NYSE MKT Rule 115—Equities, and the Exchange therefore proposes to delete NYSE MKT Rule 115—Equities, which covers the same subject.[23]

Currently, NYSE MKT Rule 115—Equities provides that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors on the Trading Floor. This aspect of current Rule 115—Equities would be replicated in proposed Rule 104(j)(iii)(B)—Equities. Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System (''ITS''). This text is obsolete as the ITS Plan has been eliminated and therefore would not be included in amended Rule 104—Equities.[24] Third, a DMM may, while acting in a market making capacity, provide information about buying or selling interest in the market, including: (a) Aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest; (b) aggregated interest of Minimum Display Reserve Orders; and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule (''CCS'') interest as described in Rule 1000(d)—Equities, in response to an inquiry from a member conducting a market probe[25] in the normal course of business.

Proposed Rule 104(j)(iii)—Equities would permit DMMs also to provide disaggregated and post-trade order information to Floor brokers.[26] Broadening the scope of information that DMMs can provide Floor brokers will assist DMMs with carrying out their historical function of bringing Floor brokers together to facilitate block and other large transactions, as demonstrated by the scenarios illustrated herein. The Exchange notes that the proposed visibility is not without precedent—NYSE Rule 115 previously allowed NYSE specialists to provide disaggregated order information to Floor brokers prior to adoption of the Hybrid Market.[27] And, as noted above, both Floor brokers and off-Floor participants currently have and will continue to have the ability to enter partially or completely ''dark'' orders that are not visible to the DMM. DMMs, in other words, would be unable to see or disseminate information about such ''dark'' orders or the dark portion of the orders in response to an inquiry from a Floor broker. When providing information, the individual DMM is responsible for fairly and impartially providing accurate and timely information to all inquiring Floor brokers about buying and selling interest in his or her assigned security.

Proposed Rule 104(j)(iii)—Equities also would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided ''in response to an inquiry from a member conducting a market probe in the normal course of business,'' as currently provided in Rule 115—Equities. The Exchange believes that the term ''market probe'' no longer accurately reflects the manner in which DMMs and Floor brokers interact on the Trading Floor. Rather, the Exchange believes that the Floor broker's normal course of business, as an agent for customers, includes both seeking market probes into the depth of the market as well as seeking out willing contra-side buyers and sellers in a particular security. In addition, the rule would specify that a Floor broker may not submit an inquiry to the DMM by electronic means and that the DMM may not use electronic means to transmit market information to a Floor broker in response to an inquiry. Under the proposed rule change, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and they would only be able to access such market information through a direct interaction with a DMM at the post.

The Exchange believes that providing Floor brokers with access to the disaggregated order information would serve a valuable function by increasing the ability of Floor brokers to source liquidity and provide price discovery for block transactions, as demonstrated in the three detailed scenarios below. In particular, the ability of Floor brokers to receive the disaggregated order information should, in turn, enhance their ability to facilitate transactions for their customers by identifying market participants with trading interest that could trade with the Floor brokers' customers. Floor brokers have historically served this role on behalf of their customers, which include institutional clients and block-trading desks, and they continue to perform this agency function today.

Effect of Market Structural Changes on the Exchange and the Floor

Before illustrating in detail how the proposed changes will facilitate block trades and expedite error resolution, the

[23] Rule 115—Equities will be redesignated as ''Reserved.'' The Exchange further proposes to make conforming amendments to Rules 13—Equities and 104(a)(6)—Equities.

[24] *See* Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007) (Intermarket Trading System; Notice of Filing and Immediate Effectiveness of the Twenty Fourth Amendment to the ITS Plan Relating to the Elimination of the ITS Plan).

[25] Generally, a market probe refers to when a Floor broker is seeking to ascertain the depth of the market in a security to determine at what price point a security may trade. However, it is a term of art whose meaning is not codified.

[26] Because DMMs on the Trading Floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

[27] *See* NYSE Regulation Information Memo 05–5 (stating that, under NYSE Rule 115, specialists may disclose the identity of the members or member organizations representing any orders entrusted to the specialist). The NYSE amended NYSE Rule 115 in connection with the Hybrid Market because at that time, there was no way for Floor brokers to enter fully dark electronic interest. Now that NYSE and Exchange systems can accept fully dark electronic interest from both Floor brokers and off-Floor participants, the Hybrid Market change to NYSE Rule 115 has been obviated and the rule can return to its former status.

Exchange believes it is essential to take into account the structural and competitive changes the Exchange and the Floor have experienced in recent years. Indeed, the Act's fairness and competition-related standards cannot appropriately guide the Commission's review absent a concrete recognition of the reshaped competition of the Exchange and the Floor and the array of execution choices available to market participants today. Toward that end, it must be recognized that NYSE and the Exchange have undergone fundamental, structural changes since 2006 and has been reshaped by the competitive dynamics that have accompanied these changes. The reforms and the intensely competitive environment within which they have taken place have their roots in the Commission's effort to modernize and strengthen the national market system for equity securities through Regulation NMS.[28] In particular, in March 2006, the Commission approved the beginning of NYSE's historic shift ''from a floor-based auction market with limited automated order interaction to a more automated market with limited floor-based auction market availability.'' [29] With the approval of the ''Hybrid Market,'' the NYSE began the substantial expansion of automatic execution and the ability of its Floor members to participate in its automated market electronically.[30] At the time of approval, automatic executions on the NYSE represented approximately 11% of its market share volume, and the bulk of executions occurred manually in its floor-based auction.[31] The average speed of execution was over ten seconds.[32] In 2005, the average trade size in NYSE-listed securities was 724 shares.[33] NYSE's share of consolidated volume in NYSE-listed names for the year preceding the approval of the Hybrid Market was 79.1%.[34]

Roughly two years later, the NYSE proposed further and substantial structural reforms with its New Market Model.[35] Foremost in significance were: (1) The phasing out of the specialist system and the concurrent creation of the DMM; (2) the alteration of the NYSE's longstanding priority and parity rules to allow DMMs to trade on equal footing with other market participants where the specialist previously had been obligated to yield to public customer orders in the book; and (3) the elimination of the advance electronic ''look'' at incoming orders that had been a historical feature of the specialist system.[36] By 2009, the average speed of execution was less than a second, and the average trade size in NYSE-listed securities had fallen to 268 shares.[37] In 2009, the year following the adoption of the New Market Model, NYSE's share of consolidated volume in NYSE-listed names was 25.1%.[38] At the risk of stating the obvious, these transformative changes have had the effect of reducing substantially the scope and utility of market information accessible to DMMs and Floor brokers—a perspective from a point of sale with roughly 80% market share differs starkly from one with less than 25%. Such changes demonstrate the flexibility that the market has with respect to utilizing different venues and various market models that best suit their needs.

Today, the Exchange continues to operate a limited Floor-based auction model. Not surprisingly, the Floor itself reflects directly the transformation recounted above. The current Floor broker community is distinguished in significant part by its embrace of technology, as reflected by the introduction of Floor broker algorithms in 2009. Though competitive dynamics have reduced the Floor's numbers, significant demand remains among the most informed market participants for the technology-enabled services of today's Floor brokers.

The Exchange seeks to compete by offering market participants a product that is entirely distinct from the trading venues of its competitors in one essential respect—the integration of human judgment into the price discovery process at a single, physical point of sale for each security.[39] This product stands more or less alone among a diverse array of completely automated execution venues available to investors today. It is important to note that the nature and extent of the integration of human judgment, delivered through DMMs and Floor brokers, is driven by the demands of informed consumers—there is no shortage of competing execution venues that have no DMMs, Floor brokers or substantial equivalents. Moreover, those market participants who choose to trade on the Exchange have no obligation to utilize the services of a Floor broker, or to use those services in a particular way. Whether and how Floor brokers are used today reflects directly, in other words, the judgment of market participants as to the value the Floor adds.

As demonstrated below, this wholly consensual integration of human judgment at the point of sale, and in particular the visibility of certain limited order information discussed herein to DMMs and Floor brokers, serve legitimate Floor functions (as well as broader market structure goals) in three important respects. They: (1) Increase the possibility that buyers and sellers of size positions can meet, thereby enhancing opportunities to reduce transaction costs; (2) expedite the discovery and resolution of errors, thereby reducing disruptive impacts and promoting fair and orderly markets; and (3) leverage the informed choices of users, allowing the interplay of competitive forces to determine the scope and nature of human interaction in the price discovery process.[40] Acute concerns with respect to the potential benefits of the referenced order information in the hands of DMMs and Floor brokers, the Exchange respectfully submits, are misplaced. The information in question would add only a view of the components and the entering and clearing firm (not the customer) for trading interest that is already visible in the aggregate to DMMs today. Given the clear obligations of DMMs and the strictly agency capacity of Floor brokers, the benefit attributable to the proposed visibility would enure to the benefit of the customer or member placing the order, not the DMM or Floor broker. The utility of the information, therefore, lies in its potential to bring buyers and sellers of size together, not to advantage intermediaries.

Benefits of Proposed Rule to Trading Floor and Investors

The Commission's Disapproval Order focused on the availability to DMMs and communication by DMMs to Floor brokers of disaggregated order information (specifically, the price and size of individual orders and the identity of the entering and clearing firms for such orders). Before turning to the particulars of the Disapproval Order,

[28] *See* Securities Exchange Act Release No. 51808, 70 FR 37496 (June 29, 2005) (''NMS Adopting Release'').

[29] *See* Securities Exchange Act Release No. 53539, 71 FR 16353 (March 31, 2006).

[30] *Id.*

[31] *Id.*

[32] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3595 (January 21, 2010) (''Equity Market Structure Release'').

[33] *Id.*

[34] *Id.* at 3595.

[35] *See* New Market Model Release.

[36] *Id.* at 64380, 64387–88.

[37] *Id.*

[38] Equity Market Structure Release at 3595.

[39] *See* S. Rept. 94–75 (1975) (''This is not to say that it is the goal of [the 1975 Amendments] to ignore or eliminate distinctions between exchange markets and over-the-counter markets or other inherent differences or variations in components of a national market system. Some present distinctions may tend to disappear in a national market system, but it is not the intention of the bill to force all markets for all securities into a single mold.'')

[40] *See* H.R. Rept. 94–229 (1975).

the Exchange would respectfully underscore its contention that the acute concern with respect to the availability of disaggregated order information to DMMs and Floor brokers is misplaced. The incremental information to be made available is demonstrably useful to DMMs, as illustrated in the scenarios and situations below, in bringing together buyers and sellers of block positions and in expediting the resolution of errors and would thereby promote both order interaction and orderly markets. However, the information simply does not add to a DMMs trading view in any meaningful way. It does no more than make visible to the DMM and available to Floor brokers the component orders of trading interest *that is already visible to the DMM in the aggregate* (and to off-Floor market participants via OpenBook) and the entering and clearing firm and Floor broker, if any. Importantly, the benefit attributable to the availability of such information would accrue as a practical matter to the customer or member organization behind a trade and not to the DMM or Floor broker involved in the trade.

In finding that the proposed rule changes were not consistent with the requirements of the Act, the Commission stated that: (1) The Exchange and commenters had not explained how the particular information proposed to be provided would further legitimate Floor functions; (2) the Exchange was ''not proposing to require any additional obligations from DMMs and Floor brokers in exchange for the additional information''; (3) the Commission was concerned that the benefit to Floor members of receiving disaggregated order information may be more than slight, ''particularly with respect to less liquid securities where order information is less likely to become rapidly stale''; and (4) the provision of disaggregated order information to Floor Members and, by extension exclusively to Floor broker customers ''could have a detrimental effect on competition between on-Floor and off-Floor members of the Exchanges.'' This revised proposed rule change addresses these concerns.

Scenarios Illustrating How the Particular Information Proposed To Be Provided Would Further Legitimate Floor Functions

The Commission stated in the Disapproval Order that neither the Exchange nor the commenters have explained how making available ''disaggregated information about public orders on the Exchange books as well as Floor broker e-Quotes'' to DMMs and Floor brokers would further legitimate Floor functions. The scenarios below illustrate how the particular information proposed to be provided—the price and size of individual orders, the identity of the entering and clearing firm, and Floor broker badge number for such orders—would serve the goals of facilitating block trades and expediting error resolution. Importantly, each of the scenarios makes clear that the benefits to the public flow from not only the proposed consensual availability of the information in question for orders entered on the Floor, but also those entered by off-Floor participants.

Scenario 1: DMM Facilitates Block Trade Between Floor Broker and Upstairs Seller by Sharing Price, Size, and Entering Firm

Assume a pension fund customer gives Floor broker a 20,000 share order to buy ABC, a mid-cap stock, at up to $10.08 at 11:00 a.m. when the PBBO for the stock is $10.03 by $10.06 with 500 shares on displayed on each side. There is no crowd at the ABC post at the time the order is received, but Floor broker can see from the tape that the stock is trading electronically on the Exchange. On the book a penny away from the inside offer at $10.07, there is a sell order for 10,000 that has been entered by Member Organization. There is no Floor broker representing the sell order, and there are no Floor broker e-Quotes on the book. Floor broker tells DMM for ABC that he or she represents a buyer of size beyond the displayed market. Currently, the DMM is permitted to inform the Floor broker of the aggregate selling interest at different price points on the book, but may not access or provide the identity of the Member Organization—an off-floor participant—that entered such selling interest. Under the proposed rule, the DMM could inform Floor broker that the off-Floor Member Organization is an entering firm for an order to sell 10,000 shares at $10.07. Floor broker could then contact the upstairs desk of Member Organization or Member Organization's on-floor representative, if any, who could then contact his or her upstairs desk, to explore a possible transaction.

Assume that the 10,000 share sell order that Member Organization sent to the Exchange is a child of a 30,000 order entered electronically by a mutual fund customer into Member Organization's customer-facing execution management system with non-displayed price discretion to $10.05. (The parent order size and price discretion obviously would not be visible to the DMM or Floor broker.) Knowing Member Organization's identity and the size and price of the trading interest Member Organization has entered into Exchange systems, the Floor broker may now contact Member Organization or Member Organization's on-floor representative and the Floor broker can indicate the size of the buying interest he or she is representing. In this respect, the Floor broker now can enter into negotiations directly, similar to how off-Floor participants, particularly broker dealers that internalize flow from their customers, can reach out directly to other broker dealers to negotiate block-sized trades. By making contact, Member Organization and Floor broker may agree to do a larger transaction at a more aggressive price. Assume Floor Broker and Member Organization agree to 20,000 shares at $10.05.

Both sides of the trade would have secured a size transaction within the parameters of their stated limit. More importantly, both would have avoided the potential market impact that a series of smaller size transactions might have produced. The transaction in all likelihood would not have occurred without the Floor broker's knowledge of the price and size of the order and the identity of the Member Organization entering it. The Floor broker, in other words, would have had no incentive to reveal that he or she represented a buyer without the meaningful possibility of an interaction that was indicated by the size and price of the trading interest and the identity of the Member Organization representing it.

The Disapproval Order notes that the Commission can envision an argument whereby enabling DMMs to see Floor broker e-Quotes or the identity of Floor brokers would facilitate the bringing together of buyers and sellers of large orders, apparently suggesting that limiting DMM visibility to this Floor broker interest would serve this end of order interaction effectively. The above scenario illustrates why limiting access only to other Floor broker interest would ignore a large segment of the trading population, and limit the ability of buyers and sellers to negotiate directly, regardless of their location. Specifically, allowing DMMs to access the disaggregated information of off-Floor participants permits DMMs to facilitate block transactions between Floor brokers and those same off-Floor participants. In the above scenario, the member organization that has not elected to utilize a Floor broker is still able to benefit from the proposed rule changes by permitting his order information to be relayed to Floor brokers on a disaggregated basis. And importantly, the member organization

has permitted the order information to be relayed on a disaggregate basis: if the member organization determines that the cost of exposing an order on a disaggregated basis outweighs any potential benefit, then the member organization can enter the order dark. Thus, the member organization can determine—on an individual basis—the benefits and costs of the permitting its own information disclosed on a disaggregated basis. Visibility of price, size, and entering firm opens up a wider range of wholly consensual channels of communication that more fully and effectively enhance the potential for order interaction. Put another way, Member Organization remains at all time in full control of the information he or she is duty-bound to protect as agent for the mutual fund seller—when entering the order on the Exchange and making it visible to the DMM and Floor brokers (*i.e.,* Member Organization could have decided to enter the order dark), and when he engages with Floor broker following Floor broker's initiation of contact (*i.e.,* Member Organization could have declined to engage with the Floor broker when he or she initiated contact). Moreover, with Floor broker share of Exchange volume currently at approximately 9%, the contra-side interest represented by a Floor broker in any given situation will likely be only a small subset of total available interest.

Scenario 2: DMM Facilitates Block Trade by Sharing Post-Trade Information With Floor Broker

An interaction similar to Scenario 1 could be facilitated by a DMM sharing post-trade information with a Floor broker pursuant to the proposed rule. Assume Floor broker has the same 20,000 share order to buy ABC from his or her pension fund customer. Assume in this scenario that Member Organization has no current interest entered in Exchange systems, but was a seller on the Exchange earlier in the day. Assume the upstairs desk of Member Organization has the same parent order of 30,000 shares of ABC as in Scenario 1. Floor broker approaches the DMM and asks if there is enough sell-side interest to accommodate. DMM tells Floor broker that there is no interest to accommodate, but that Member Organization was a seller earlier in the day. As in Scenario 1, assume there is no Floor broker representing the seller. Floor Broker approaches the upstairs desk of Member Organization or Member Organization's on-floor representative, if any, who could then contact his or her upstairs desk, and achieves the same result as in Scenario 1. As with Scenario 1, the benefit of the interaction illustrated here stems from the consensual availability of information related to orders entered by an off-Floor participant.

Scenario 3: DMM Facilitates Block Issuer Repurchase Transaction by Sharing Price, Size, and Entering Firm

Assume an Exchange-listed issuer engages a Floor broker to handle a Rule 10b–18 repurchase with a goal of repurchasing 500,000 shares at a maximum price of $10.15. Assume the highest current independent published bid is $10.03, the last independent transaction price reported was $10.08, and the offer is quoted at $10.07. The issuer wishes to make a block purchase of up to 100,000 at $10.07 or better.[41] The Floor broker approaches the DMM and asks about selling interest at the $10.07 price level. Under the proposed rule, the DMM could inform Floor broker that Member Organization is a seller of 10,000 shares at $10.07. Assume as in the prior scenarios that there is no Floor broker representing the selling interest and that the Floor broker initiates contact with the upstairs desk of Member Organization or Member Organization's on-floor representative, if any, who could then contact his or her upstairs desk, and finds additional selling interest upstairs as in Scenario 1. Assume the Floor broker and Member Organization agree upon a transaction of 100,000 shares at $10.07.

In this scenario, the issuer receives a large fill at better than the last independent transaction price, and both sides have minimized the impact of their transaction. As the Commission has previously stated in considering block purchases by issuers, ''the market impact of a block purchase is likely to be less than that of a series of purchases of smaller amount that in the aggregate are equal in size to the block but are accomplished over a period of time.'' [42] As with Scenarios 1 and 2, the benefit to the repurchasing issuer and the seller illustrated here stems from the consensual availability of information related to orders entered by an off-Floor participant.

Situations Where DMM Access to Entering Firm's Identity Would Prevent Errors or Expedite Resolution Thereof

In addition to promoting the interaction of buyers and sellers in size transactions, DMM access to the identity of firms entering individual orders would improve a DMM's ability to identify erroneous trades and to intervene where entering firms, whether a Floor broker or off-Floor participant, are experiencing technology problems. The proposed visibility would expedite the identification and possible prevention of such errors. Moreover, the Exchange's recent experience in identifying the source of millions of unintended trades in more than 150 symbols attributable to a member's software malfunction [43] confirms the potential contribution of the proposed visibility to the diagnosis and resolution of problems and the maintenance of orderly markets. Specifically, in that situation, the DMMs were the first to identify the anomalous trades and report the trades to Exchange officials. The Exchange believes that had DMMs also been able to see the commonality of the entering firm in the spike of incoming orders, the source of the disruption may have been identified more quickly, potentially avoiding millions of dollars in firm losses. Finally, entering firm information can serve to mitigate the effect of less severe but still important technology problems, such as Floor broker handheld outages. DMMs currently are unable to identify individual Floor broker orders and cancel them during handheld outages; the proposed rule would enable them to perform this important function.

Burdens Placed on DMMs and Floor Brokers

The Disapproval Order notes that the Exchange was ''not proposing to require any additional obligations from DMMs and Floor brokers in exchange for the additional information.'' [44] As noted

[41] Rule 10b–18 provides an issuer with a safe harbor from liability under Section 9(a)(2) of the Act and Rule 10b–5 under the Act based on the manner, timing, price, and volume of their repurchased when in accordance with Rule 10b–18's conditions. Rule 10b–18(b)(4) provides the condition that the total volume of the purchases cannot exceed 25 percent of the average daily total volume for that security; however, once per week the issuer may make one block purchase without regards to the volume limit if no other Rule 10b–18 purchase takes place on the same day and the block purchase is not included when calculating a security's four week average daily total volume.

[42] Exchange Act Release No. 17222 (October 17, 1980) (''10b–18 Proposing Release''). Rule 10b–18 was originally proposed as Rule 13e–2.

[43] *Loss Swamps Trading Firm,* Wall Street Journal, August 2, 2012.

[44] *See* Disapproval Order at 10. The Exchange believes that a close reading of the precedent indicates that this level of scrutiny of the incremental obligations associated with a proposal such as this one is not required. The source of the scrutiny stems from New Market Model Order in which the NYSE proposed fundamental structural changes, including phasing out the specialist system and a wholesale alteration of the NYSE's historic priority and parity rules. *See* Securities Exchange Act Release No. 58845, 73 FR 64379 (October 29, 2008) (''New Market Model Release''). What was proposed in the New Market Model, in other words, called for a review by the Commission that was necessarily intense, in stark contrast with

above, the Exchange does not believe the additional information adds meaningfully to the trading view of the DMM, and that any such addition would benefit customers, not DMMs and Floor brokers. Indeed, the function of providing disaggregated order information to Floor brokers upon request would be an administrative burden to DMMs rather than a benefit. Additionally, as noted above, Floor brokers, as agents, would receive no benefit attributable to the information, as such benefit would flow directly and entirely to the customer whose order they are representing and the contra side to it. Moreover, the Exchange believes, based on fundamental changes in the competitive context since the approval of the New Market Model and the continuing and significant obligations of DMMs and Floor brokers, that the proposed availability of disaggregated order information would not constitute a disproportionate benefit. In other words, the potential value of the information in question has been substantially diminished since 2006 in that that DMMs only have information about orders at the Exchange, which represent approximately 22% of market-wide volume in Exchange-listed stocks across the market.

Notwithstanding the DMM's evolving role in the overall trading of Exchange-listed securities, the obligations and restrictions placed on DMMs and Floor brokers have remained unchanged. In addition, the manual process by which disaggregated order information is accessed reduces to a minimum any potential benefit. As demonstrated by the scenarios above, perhaps its principal value is the opportunity it offers to open a consensual dialogue with a counterparty—an opportunity aligned with both the interests of other Floor and non-Floor members as well as investors. The disaggregated order information, while inconsequential from a trading perspective, is thus important administratively in clearing the way to size interactions, reducing transaction costs, and enhancing the quality of the Exchange's market.

Specifically, with respect to the continuing and significant burdens on DMMs, pursuant to NYSE MKT Rule 104—Equities, a function of a DMM is:

> [T]he maintenance, in so far as reasonably practicable, of a fair and orderly market on the Exchange in the stocks in which he or she is so acting. The maintenance of a fair and orderly market implies the maintenance of price continuity with reasonable depth, to the extent possible consistent with the ability of participants to use reserve orders, and the minimizing of the effects of temporary disparity between supply and demand. In connection with the maintenance of a fair and orderly market, it is commonly desirable that a member acting as DMM engage to a reasonable degree under existing circumstances in dealings for the DMM's own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated.[45]

Additionally, any transaction by a DMM for the DMM's account must ''be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock.'' [46]

Furthermore, the Exchange notes that any non-public market information that a DMM receives through Exchange systems would be subject to specific restrictions as ''non-public order information'' [47] under NYSE MKT Rule 98—Equities. For example, Rule 98(c)(2)(A)—Equities would require DMMs to maintain the confidentiality of any such non-public market information and would prohibit the DMM member organization's departments, divisions, or aggregation units that are not part of the DMM unit, including investment banking, research, and customer-facing departments, from having access to that information. In addition, Rule 98—Equities sets forth restrictions on access to non-public order information by the off-Floor locations of a DMM unit, including restrictions on the ability of a DMM located on the Trading Floor from communicating directly with off-Floor individuals or systems responsible for making off-Floor trading decisions.[48]

The manner by which the DMM would access disaggregated order information aligns precisely with the information's relative lack of trading utility and its administrative significance in facilitating size interactions. A DMM can access the disaggregated order information only while located at the post on the Trading Floor, and a DMM's ability to access the disaggregated order information is largely manual. The DMM must query the specific information about a particular security, which limits the number of securities about which disaggregated order information can be accessed at any given time. Importantly, Exchange systems would not provide disaggregated order information to the algorithmic trading systems of any DMM unit,[49] and would not support any electronic dissemination of the disaggregated order information to other market participants. As noted above, participants who do not want the DMM to have access to disaggregated order information have the option to enter dark interest that is not visible to the DMM in disaggregated form. The Exchange also notes that the proposed rule change would specifically prohibit DMMs from using any trading information available to them in Exchange systems, including disaggregated order information, in a manner that would violate the Exchange rules or federal securities laws or regulations.[50]

Benefit to Floor of the Proposed Availability of Disaggregated Order Information

The Disapproval Order also raised concerns about the possible benefit to Floor members of the proposed availability of order information, stating that the benefit to Floor members may

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the modest changes proposed here. Additionally, in support of what would be regarded as ''special advantages'' and ''rewards that are not disproportionate to the services provided,'' the Commission previously cited a series of orders approving proposals that generally involve the creation or registration of a new class of market maker or participation of an existing class in a new market. Those proposals, similar to the New Market Model, were structural in nature and in stark contrast to the limited nature of this proposed rule change. Furthermore, the principal market participant impacted by the present proceeding, Floor brokers, is not a market maker at all, but an agent, rendering much of the referenced precedent factually distinct. Accordingly, the Exchange respectfully suggests that the level of scrutiny associated with the precedents cited is not required here.

[45] *See* NYSE Rule 104(a)(1)—Equities.

[46] *See* NYSE Rule 104(g)—Equities.

[47] NYSE Rule 98(b)(7)—Equities defines the term ''non-public order'' to mean ''any order, whether expressed electronically or verbally, or any information regarding a reasonably imminent non-public transaction or series of transactions entered or intended for entry or execution on the Exchange and which is not publicly available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook® or otherwise not publicly available. Non-public orders include order information at the opening, re-openings, the close, when the security is trading in slow mode, and order information in the NYSE Display Book® that is not available via NYSE OpenBook®.''

[48] *See* Rules 98(d)(2)(B)(i)–(iii), (f)(1)(A)(i)–(ii), and (f)(3)(C)(ii)—Equities. In addition, Rule 98(c)(2)(A)(ii)—Equities provides that a DMM may make available to a Floor broker associated with an approved person or member organization any information that the DMM would be permitted to provide under Exchange rules to an unaffiliated Floor broker.

[49] The order information in these systems would be available for a DMM to view manually at the post and as such is different from the advance order-by-order information that DMM trading algorithms previously received before implementation of the New Market Model pilot (sometimes referred to as ''the look''). Under the proposed rule change, as is the case today, DMM trading algorithms would have the same information with respect to orders entered on the Exchange, Floor broker agency interest files or reserve interest as is disseminated to the public by the Exchange. *See* Rule 104(b)(iii)—Equities.

[50] *See* Proposed NYSE MKT Rule 104(j)(ii)—Equities.

be more than slight, ''particularly with respect to less liquid securities where order information is less likely to become rapidly stale.'' Respectfully, the Commission's concern about the possible benefit to Floor members is misplaced, irrespective of whether the security is highly liquid or less liquid.

It has been noted above, but is worth stressing, that DMMs currently have access to aggregated order information that fully reflects the size of trading interest for a particular security on the Exchange that has not been designated as dark by the entering firm. Similarly, such aggregated information for interest not marked dark is visible to any market participant beyond the Floor via OpenBook. What is proposed, therefore, is *not* making a new segment of trading interest visible to DMMs, but rather making the components of already visible trading interest available, along with the entering firm, clearing firm, and badge number of the Floor broker, if any. Since the proposal would not increase the visibility of trading interest in less liquid securities, the question of whether such information is more or less likely to remain fresh or become stale is not at issue in a meaningful way. The point of the proposed availability of order information is to enable Floor brokers to search more effectively for size counterparties for their customers and to expedite the ability of DMMs to resolve errors, not to improve the trading position of DMMs.

Moreover, the question of staleness is further beside the point when one remembers that DMM trading today is predominantly automated and algorithmic. Even if the proposed visibility included trading interest that was not currently visible—it does not—DMMs as a practical matter would need to integrate such information into their automated trading models to use it. Exchange systems, however, would specifically prevent such use.

To the extent that the Commission is concerned that a DMM could otherwise use the proposed incremental information for trading purposes, it is useful to consider the premise apparently underlying the concern. The premise is presumably that learning the component sizes of trading interest that is already visible in the aggregate, or that learning the identity of the entering firm, clearing firm, or the Floor broker for a component order, could somehow add sufficiently to the DMMs view of the market to induce the DMM to trade on the same side or opposite side of a component order. The Exchange is aware of no facts, data or analyisis that would support such a premise. Additionally, firms already advertise many of these particulars of their trading interest on both a pre- and post-trade basis (IOIs and other forms) through a variety of electronic vendor solutions, such as Bloomberg [51] and Autex.[52] Therefore, the ability and willingness of firms to advertise their interest is hardly a new concept in today's marketplace. The proposal would simply restore within the Exchange environment features and services previously available on the Floor and currently offered beyond the Floor by multiple market data vendors.

Moreover, the balance of benefits and potential costs would favor unambiguously a choice on the part of a member or customer to make disaggregated order information visible to the DMM and available to Floor brokers. As illustrated in detail by Scenarios 1 and 2 above, the potential benefits to a customer of sharing disaggregated order information (again, by choosing not to enter the order dark) would be both significant and concrete. A member's sharing of a customer's order information, for example, would make it possible for contra side interest to initiate contact with the member and for the customer to experience a size transaction that avoids market impact and reduces transaction costs. In contrast, the potential cost of sharing the information would be de minimis because the component order information would add nothing meaningful to the information reflected in the aggregate trading interest already visible to DMM and to the market via OpenBook. More fundamentally, members today can choose from an array of alternatives to the Exchange's integration of human judgment into the price discovery process at a single, physical point of sale. That choice represents the ultimate check on any imbalance in the allocation of benefits to DMMs or Floor brokers.

It is also worth noting that the utility of disaggregated order to the Floor is largely independent from its freshness or staleness as trading information. Information that is stale in trading terms, for example, may nonetheless be enormously helpful to an agent like a Floor broker in the search for a size counterparty. Assume, for instance, that there is no live interest expressed in the Display Book at or near a particular price point. It may nonetheless be useful for a Floor broker to know that a particular firm had entered an order in the security at a particular level a day or two before. Knowing the identity of the entering firm could allow a Floor broker to identify a counterparty in much the same way as Scenario 1 above, producing the same size interaction and reduced transaction costs for both sides of the trade. Notably, this utility is also distinct from how actively traded a particular security is.

Moreover, Section 11(a) obligations on Floor brokers ensure that investors, not Floor brokers, will reap the benefits of access to the disaggregated order information, providing that Floor brokers will not ''effect any transaction on [the] exchange for its own account . . . .'' [53] This trading restriction has been in place since 1978, when Floor brokers regularly had access to disaggregated order information on the Floor. NYSE amended NYSE Rule 115 regarding what information could be provided in connection with a market look because, at the time, NYSE did not have the technology to replicate the ability of Floor brokers to maintain certain interest as ''dark.'' Although NYSE reduced the access to information available to Floor brokers—which was always via the specialist, and now, DMM—the trading restrictions were not lessened. Now that NYSE and the Exchange have enabled market participants to replicate electronically the type of dark interest formerly maintained manually by Floor brokers, the Exchange can restore the access to disaggregated order information without any need to adjust the applicable trading restrictions. These applicable trading restrictions provide assurance that the Floor brokers will not be reaping the benefits of access to disaggregated order information; the benefits will directly flow to investors.

Existing trading restrictions and the additional affirmative obligations required by the New Market Model provide appropriate controls, ensuring that the adoption of Rule 104(j)—Equities meets the requirements of Section 6(b)(5) of the Act. As previously enumerated, DMMs are subject to a number of restrictions governing access to non-public order information that remains unchanged since before the adoption of the New Market Model, and which were put in place when DMMs still had an agency role. Even though they no longer act as agents, DMMs are still subject to those trading restrictions. The rules of the Exchange are designed such that any additional access by

[51] Bloomberg allows brokers to disseminate IOIs to the buy-side via Bloomberg's Execution Management Solutions.

[52] Autex is an electronic platform from Thomson Financial that allows potential buyers and sellers to identify other large traders by showing ''trade advertisements'' in a stock. The interface presents indicators of interest among traders, permitting buy-side clients to identify optimum trading partners.

[53] 15 U.S.C. 78k(a) (2012).

DMMs and Floor brokers to information not available generally to off-Floor traders carries with it restrictive obligations regarding the permitted use of such information.

Floor Competition With Off-Floor Members

The Disapproval Order expresses concern about the provision of disaggregated order information to Floor Members and, by extension, exclusively to Floor broker customers and the potential ''detrimental effect on competition between on-Floor and off-Floor members of the Exchanges.'' Several points bear emphasis here. The Floor broker's ability to share information in this way aligns with the agency relationship between the Floor broker and his or her customer, and is complementary to other affected market participants. That is, the agent-Floor broker is enabled to make full disclosure to his or her principal-customer. The customer, given his or her own trading interest, has an interest in not disseminating the information learned from the Floor broker. The member organization and the member organization's customer benefit in that the Floor broker's customer potentially could initiate direct contact with the member organization. In this way, the Floor broker's sharing of this type of information with the customer provides a sort of check of the principal on the agent and ensures that the agent adds value. The Exchange's integration of human judgment into a point of sale occurs, in other words, within a competitive landscape filled with customer choice among both exchange and off-exchange venues. The modest increase in visibility offered by the proposed rules, especially in light of increasing dispersal of liquidity, in no way upsets that competitive balance.

In addition, extending the proposed visibility to other off-Floor participants presents obvious dangers. NYSE MKT Rules 98—Equities and 104(b)—Equities are not applicable to other proprietary traders, for example. Accordingly, if disaggregated information were provided electronically to all market participants, there would be no mechanism or informational barrier ensuring that the disaggregated information could only be used for the benefit of investors. Rule 104(j)'s success in protecting investors and the public interest is directly tied to its limited access.

Finally, any off-Floor member is free to utilize the services of a Floor broker, in which case, the benefits of the proposed rule change would flow entirely to the off-Floor member (or the customer entering the order). Additionally, the benefits of the proposed rule change still inure to those participants who choose not to utilize Floor brokers because Floor brokers may source liquidity from those participants. The proposed rule change is not a zero-sum game: the benefits of the proposal are spread across market participants, not limited to a select few at the expense of others.

Conforming Amendments

To reflect the information that would be available to DMMs through Exchange systems, the Exchange proposes amendments to Rules 70(e), (f) and (i)—Equities and 70.25(a)(vii)—Equities to specify which information is available to a DMM through Exchange systems. The Exchange also proposes changes to Rule 70—Equities to specify what information about e-Quotes is available to the DMM. The Exchange notes that the proposed amendments to Rule 70—Equities do not change the operation of the existing rule, other than to specify which interest may be available to the DMM on a disaggregated basis, as discussed above. Rather, the amendments are proposed as clarifying changes with respect to the manner that Floor broker agency interest currently operates and how such interest may be available to the DMM. For example, current Rule 70(e)—Equities states that a Floor broker has discretion to exclude all of his or her agency interest, subject to the provisions in the rule, from the aggregated agency interest information available to the DMM consistent with Exchange rules governing Reserve Orders. Because ''excluding'' interest from the information available to the DMM is similar to how Reserve Orders operate pursuant to Rule 13—Equities, the Exchange proposes to harmonize the terms and use term ''e-Quote'' to replace the term ''Floor broker agency interest,'' use the term ''Minimum Display Reserve e-Quote'' to replace the concept in current Rule 70(f)(ii)—Equities, and use the term ''Non-Display Reserve e-Quotes'' to replace the concept in current Rule 70(f)(i)—Equities. The Exchange also proposes to provide more specificity in amended Rule 70—Equities of how such interest would be made available to the DMM, consistent with the current operation of the Rule.

In addition, the Exchange proposes to delete Rule 104(a)(6)—Equities, which currently provides that DMMs, trading assistants and anyone acting on their behalf are prohibited from using the Display Book® system to access information about Floor broker agency interest excluded from the aggregated agency interest and Minimum Display Reserve Order information other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect such transaction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[54] in general, and Section 6(b)(5) of the Act,[55] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed change promotes just and equitable principles of trade because the proposed change is an integration of human judgment into the price discovery process at a single, physical point of sale, whose nature and extent is driven by the demands of informed consumers. With no shortage of competing execution venues and the lack of an obligation on the part of market participants to utilize the services of a Floor broker, whether and how Floor brokers are used reflect the value placed by market participants on what the Floor adds. The wholly consensual integration of human judgment will serve legitimate Floor functions in three respects: (1) It increases the possibility that buyers and sellers of size positions can meet, thereby enhancing their opportunities to reduce transaction costs; (2) it expedites the discovery and resolution of errors, thereby reducing disruptive impacts and promoting fair and orderly markets; and (3) it leverages the informed choices of users, allowing the interplay of competitive forces to determine the scope and nature of human interaction in the price discovery process.

Similarly, the Exchange believes that the proposed change will protect investors and the public interest because existing trading restrictions and additional affirmative obligations required by the New Market Model provide appropriate controls. As previously stated, DMMs are subject to a number of restrictions governing access to non-public order information. Additionally, the rules of the Exchange are designed such that any additional access by DMMs and Floor brokers to information not available generally to

[54] 15 U.S.C. 78f(b).

[55] 15 U.S.C. 78f(b)(5).

off-Floor traders carries with it restrictive obligations regarding the permitted use of such information.

Additionally, the Exchange believes that the proposed change will remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the proposed change clarifies that DMMs may perform certain defined Trading Floor functions, which were previously performed by specialists, in furtherance of the efficient, fair, and orderly operation of the Exchange. Increasing the amount of information, including disaggregated order information, that a DMM is permitted to view and provide to Floor brokers would further the ability of DMMs to carry out the defined Trading Floor functions and, as a result is designed to remove impediments to and perfect the mechanism of a free and open market through the efficient operation of the Exchange, in particular by facilitating the bringing of buyers and sellers together.

The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because extending the proposed visibility to other off-Floor participants presents obvious dangers: NYSE MKT Rules 98—Equities and 104(b)—Equities are not applicable to other proprietary traders, and if disaggregated information were provided electronically to all participants, there would be no mechanism or informational barrier ensuring that the disaggregated information could only be used for the benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the execution of block trades, and as a result, will reduce the market impact and associated transactions costs for members wishing to take advantage of the rule proposal. The reduction of transaction costs, along with the proposal's other purpose of expediting error resolution, will improve the efficiency of the market and remove barriers to order execution, thus increasing the level of participation and competition in the marketplace.

The Exchange operates in a highly competitive market in which market participants can easily and readily direct order flow to competing venues. The Exchange's integration of human judgment into a point of sale occurs within that competitive landscape filled with customer choice among both exchange and off-exchange venues. The modest increase in visibility offered by the proposed rules, especially in light of increasing dispersal of liquidity, in no way upsets that competitive balance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–25 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2013–25. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEMKT–2013–25 and should be submitted on or before May 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[56]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10016 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69422; File No. SR–CBOE–2013–042]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

April 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[56] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make a number of technical and superficial changes to its Fees Schedule. No substantive changes to Exchange fees are proposed herein.

First, HOLDRs options are no longer traded on the Exchange, so the Exchange proposes to remove all references to such options. As such, references to HOLDRs options in the ETF, ETN and HOLDRs Options Rate Table, the Customer Large Trade Discount table, and Footnotes 6, 8 and 9 will be deleted. The ETF, ETN and HOLDRs Options Rate Table will now be called the ETF and ETN Options Rate Table, the Customer Large Trade Discount table will refer to ''ETF and ETN Options'', and applicable sections of footnotes 8 and 9 will simply say ''ETF and ETN options''.

Next, the Exchange proposes to re-name the Proprietary Index Options Rate Table—SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES the ''Specified Proprietary Index Options Rate Table—SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES'' (the ''Specified Index Options Rate Table''). The addition of the word ''Specified'' is intended to clarify that not all proprietary index options are subject to this rate table (those not specified are subject to the Index Options Rate Table—All Index Products Excluding SPX, SPXW, SPXpm, SRO, OEX, XEO, VIX and VOLATILITY INDEXES (the ''Other Index Options Rate Table'')).

Footnote 20 describes the CFLEX AIM Response fee. However, on the Equity Options Rate Table, the ETF and ETN Options Rate Table, the Specified Index Options Rate Table, the Other Index Options Rate Table, and the Mini-Options Rate Table, this fee is merely listed as the CFLEX AIM fee. The Exchange proposes to add the word ''Response'' and list the fee in all the above-mentioned rate tables as the CFLEX AIM Response fee in order to more accurately display the fee's name.

Next, the Exchange proposes to make more clear the fact that the Exchange will assess no Clearing Trading Permit Holder Proprietary transaction fees for certain types of facilitation orders (as defined in Footnote 11 of the Fees Schedule) in certain classes.[3] As such, the Exchange proposes to add to the Equity Options Rate Table, the ETF and ETN Options Rate Table, and the Other Index Options Rate Table a line that lists the Clearing Trading Permit Holder Proprietary Facilitation fees as being assessed a fee of $0.00 per contract for manual, AIM Agency/Primary, AIM Contra, QCC and CFLEX AIM Response transactions (regular electronic Clearing Trading Permit Holder Proprietary facilitation transactions are assessed a $0.25 per-contract fee, like other Clearing Trading Permit Holder Proprietary transactions, as they are not subject to the waiver), per the language currently in Footnote 11. On all such rate tables, the new line will include a reference to Footnote 11.

Next, the Broker-Dealer line on the Equity Options Rate Table, the ETF and ETN Options Rate Table, the Specified Index Options Rate Table, the Other Index Options Rate Table, the Mini-Options Rate Table and the Credit Default Options and Credit Default Basket Options Rate Table (together, the ''Rate Tables'') contains an erroneous reference to Footnote 11 (such reference being erroneous because Footnote 11 does not apply to Broker-Dealers. As such, the Exchange proposes to delete such references.

The Exchange's Hybrid 3.0 Execution Fee applies to products traded on the Hybrid 3.0 system. Occasionally, the Exchange receives questions regarding to which products that fee applies. As such, the Exchange proposes to amend the line on the Specified Index Options Rate Table listing the Hybrid 3.0 Execution Fee to state that it applies to SPX and SPXQ only (as those are the products traded on Hybrid 3.0).

The Exchange instituted a CFLEX AIM Credit for some orders executed via a CFLEX AIM auction from November 1, 2012 through December 31, 2012 (the ''CFLEX AIM Credit'').[4] As it is now past December 31, 2012, the CFLEX AIM Credit has expired. As such, the Exchange proposes to delete references to it from the Equity Options, ETF and ETN Options, and Other Index Options Rate Tables. The Exchange also proposes to delete the text of Footnote 28 (which describes the CFLEX AIM Credit) and merely label such footnote as ''Reserved.'' Next, the Exchange no longer operates under a structure in which persons or organizations own seats on the Exchange and therefore could lease seats out to other parties. As such, there are no longer lessees or lessors on the Exchange, and the reference in the ''Individual'' line on Trading Permit Holder Application Fees table to ''/Lessee/Lessor'' is obsolete and no longer relevant, and thus the Exchange proposes to delete such reference.

The Exchange's Options Regulatory Fee (''ORF'') is listed as being $0.0065 per contract through December 31, 2012 and $0.0085 per contract effective January 2, 2013. As these dates have passed and the ORF is now simply $0.0085 per contract, the Exchange proposes to delete the reference to the ORF being $0.0065 per contract through December 31, 2012 and the January 2, 2013 effective date of the $0.0085 per contract ORF.

The Notes for the Exchange's Non-Standard Booth Rental Fee state that ''Effective April 1, 2012, a Trading Permit Holder (''TPH'') organization will pay the fees per square foot on a monthly basis for use of a non-standard booth.'' Since April 1, 2012 has passed, the Exchange proposes to eliminate the reference to such date and merely have the sentence read ''A Trading Permit Holder (''TPH'') organization will pay the fees per square foot on a monthly basis for use of a non-standard booth.''

The Notes to the Exchange's CMI and FIX Login ID fees state that CMI and FIX Login ID fees are waived through September 30, 2012 for CMI and FIX Login IDs used to access the CFLEX system. As September 30, 2012 has

[3] *See* CBOE Fees Schedule, Footnote 11 for more details.

[4] *See* Securities Exchange Act Release No. 68169 (November 6, 2012), 77 FR 67703 (November 13, 2012) (Sr–CBOE–2012–105).

passed, the Exchange proposes to delete this note.

The Exchange Fees Schedule has a Trading Permit Holder Transaction Fee Policies and Rebate Programs table that lists one fee, the Chicago Mercantile Exchange (CME) Members SPX and OEX Fees, which states that ''Pursuant to an agreement between the CBOE and the CME, CME members are eligible to receive rebates from customer transaction fee rates on SPX and OEX transactions for their own account. Although CME members activity clears as customer trades and are charged customer rates, CME members will receive a transaction fee rebate of $.06 per contract when the premium is $1 or higher and $.03 when the premium is under $1, upon submission of an itemized rebate request (see policy below). CBOE Trading Permit Holders are also eligible for reduced fees on their CME S&P 500 and S&P 100 activity.'' The table then states that ''ALL REBATE REQUESTS MUST BE RECEIVED NO LATER THAN 60 DAYS AFTER THE MONTH-END TO WHICH THE TRADE RELATES AND INCLUDE TRANSACTION DETAIL AS REPORTED TO TRADE MATCH. REBATE REQUEST FORMS MAY BE OBTAINED BY CALLING DON PATTON AT (312) 786–7026.'' The agreement referenced between the CBOE and CME is no longer valid. As such, the fee listed and all other text in this table is no longer valid, and therefore the Exchange proposes to delete such table.

Footnote 19 to the Exchange Fees Schedule reads, in part, ''The AIM Agency/Primary Fee applies to all broker-dealer, non-Trading Permit Holder market-maker, JBO participant, voluntary professional, and professional orders in all products, except volatility indexes, executed in AIM, SAM, FLEX AIM and FLEX SAM auctions, that were initially entered as a Agency/Primary Order.'' This is grammatically incorrect, and the Exchange proposes to amend the end of this sentence to read ''entered as an Agency/Primary Order.''

The Exchange proposes to add (in two places) to the Customer line on the Linkage Fees table that such fees apply in addition to the customary CBOE execution charges. As this table only applies to Linkage fees and not other execution fees, the Exchange believes that this fact was already clear, but has elected to clarify due to a question received from a customer. Footnote 25 of the Exchange Fees Schedule states that ''An additional monthly fee of $2,000 per month will be assessed to any Floor Broker Trading Permit Holder that executes more than 20,000 VIX contracts during the month. If and to the extent that a Trading Permit Holder or TPH organization has more than one Floor Broker Trading Permit that is utilized to execute VIX options transactions, the VIX executions of that Trading Permit Holder or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single $2,000 fee for the combined VIX executions through those Floor Broker Trading Permits if the executions exceed 20,000 contracts per month.'' The Exchange desires to make this more prominent, and therefore proposes to move it to the Trading Permit and Tier Appointment Fees table and title it the Floor Broker VIX Surcharge.

Footnote 25 of the Exchange Fees Schedule also states that ''An additional monthly fee of $3,000 per month will be assessed to any Floor Broker Trading Permit Holder that executes more than 20,000 SPX contracts during the month. If and to the extent that a Trading Permit Holder or TPH organization has more than one Floor Broker Trading Permit that is utilized to execute SPX options transactions, the SPX executions of that Trading Permit Holder or TPH organization shall be aggregated for purposes of determining this additional monthly fee and the Trading Permit Holder or TPH organization shall be charged a single $3,000 fee for the combined SPX executions through those Floor Broker Trading permits if the executions exceed 20,000 contracts per month. For purposes of determining the 20,000 contracts per month threshold, SRO executions are excluded for purposes of the calculation of executed SPX contracts during the month.'' The Exchange desires to make this more prominent, and therefore proposes to move it to the Trading Permit and Tier Appointment Fees table and title it the Floor Broker SPX Surcharge.

The Exchange noticed that the origin code ''B'' is erroneously listed as corresponding to the Floor Broker Trading Permit on the Trading Permit and Tier Appointment Fees table and therefore proposes to delete this listing. Also, the Exchange proposes to add ''Floor Broker'' as an origin to this table, as the table lists some fees that are applicable to floor brokers. Finally, the Exchange proposes to split up the ''Regulatory Fees'' table on the Fees Schedule (and add the word ''continued'' at the top of the 2nd portion of the table) in order to better fit such table on the Fees Schedule.

The purpose of the changes proposed herein is to fix erroneous and obsolete references in the Exchange Fees Schedule and make the Fees Schedule more clear and less confusing for investors.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Fixing erroneous and obsolete references in the Exchange Fees Schedule and making the Fees Schedule more clear and less confusing for investors is designed to eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[7] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers, as this newly-cleaned-up Fees Schedule is available to all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will not impose an unnecessary burden on intramarket competition because no substantive changes were made to the Fees Schedule and the newly-cleaned-up Fees Schedule is available to all market participants. The Exchange believes that

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

the proposed rule change will not impose an unnecessary burden on intermarket competition because no substantive changes were made to the Fees Schedule and because this Fees Schedule only applies to Exchange fees. To the extent that the newly-cleaned-up Fees Schedule may be attractive to market participants on other exchanges, such market participants may always elect to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [8] and paragraph (f) of Rule 19b–4 [9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–042 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–042. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F St NE., Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2013–042, and should be submitted on or before May 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10014 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69424; File No. SR–FICC–2013–01]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change Amending the Mortgage-Backed Securities Division Fails Charge Rule To Reflect Recommendation of the Treasury Market Practice Group

April 22, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 12, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to amend the existing fails charge rule in FICC's Mortgage-Backed Securities Division (''MBSD'') Clearing Rules in order to reflect the recent recommendation from the Treasury Market Practices Group (''TMPG'') relating to the removal of the resolution period for fails charges.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

To address the persistent settlement fails in agency debt and mortgage-backed securities (''MBS'') transactions and to encourage market participants to resolve such fails promptly, the TMPG recommended in February 2012 that the MBS market impose a fails charge in an effort to reduce the incidence of delivery failures and support liquidity in the markets.[5] MBSD amended Rule 12 (Fails Charges) of MBSD's Clearing Rules in March 2012 to reflect TMPG's

[3] The text of the proposed rule change is provided as Exhibit 5 to this filing and is available at *www.dtcc.com/downloads/legal/rule_filings/2013/ficc/SR_FICC_2013_01.pdf.*

[4] The Commission has modified the text of the summaries prepared by FICC.

[5] The TMPG is a group of market participants active in the treasury securities market sponsored by the Federal Reserve Bank of New York.

recommendations.[6] The fails charge for MBS transactions applies to certain trades settled in the MBSD central counterparty (''CCP'') (*i.e.,* settlement of pools versus FICC involving failing agency MBS issued or guaranteed by Fannie Mae, Freddie Mac and Ginnie Mae.) Consistent with the TMPG's initial recommendation, MBSD's Rule 12 does not currently impose a fails charge if delivery occurs on either of the two business days following the contractual settlement date. The two business days are sometimes referred to as the ''resolution period.''

However, on March 1, 2013, the TMPG issued a new recommendation to remove the two-day resolution period from the current practice.[7] The TMPG has advised that the revised recommendation should apply to transactions in agency MBS transactions entered into on or after July 1, 2013, as well as to transactions that were entered into prior to but remain unsettled as of July 1, 2013.

The purpose of this proposed rule change is to amend the existing fails charge rule to reflect TMPG's most recent recommendation. In order to maintain symmetry with the MBS marketplace, FICC is now proposing to amend MBSD's Rule 12 in order to remove the two-day resolution period provision from the rule. Consequently, an agency MBS settlement fail will be subject to a fails charge for each calendar day that the fail is outstanding, even if the delivery occurs on either of the first two business days following the contractual settlement date. FICC is also proposing that the proposed rule change will be effective as of July 1, 2013, in accordance with the TMPG's recommendation. All other provisions of the agency MBS fails charge rule, including the fails charge rate and trading practices, remain unchanged.

FICC believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it would facilitate the prompt and accurate clearance and settlement of securities transactions by discouraging persistent fails of agency MBS transactions in the marketplace.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule changes have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include file Number SR–FICC–2013–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2013–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2013/ficc/SR_FICC_2013_01.pdf*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2013–01 and should be submitted on or before May 20, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10025 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

[6] *See* Securities Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) (File No. SR–FICC–2008–01).

[7] Press Release, Federal Reserve Bank of New York, TMPG Revises Agency MBS Fails Charge Trading Practice (March 1, 2013) (available at *www.newyorkfed.org/tmpg/03_01_2013_Fails_charges_press_release.pdf*).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69435; File No. SR–CME–2013–04]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing of Proposed Rule Change Related to the Liquidity Factor of CME's CDS Margin Methodology

April 23, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2013, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by CME. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CME proposes to make an adjustment to one particular component of its current credit default swap (''CDS'') margin model. The text of the proposed rule change is below. Italicized text indicates additions; bracketed text indicates deletions.

* * * * *

CME CDS Liquidity Margin Factor Calculation Methodology

The Liquidity Factor will be calculated as the sum of two components:

(1) A concentration charge for market exposure as a function of absolute Spread DV01 (a portfolio sensitivity to 1% par spread shock); and

(2) A concentration charge for portfolio basis exposure as a function of Residual Spread DV01 (which is the difference between the Gross Spread DV01 and the Net Spread DV01 of the portfolio).

CME will also establish a floor component to the Liquidity Factor using the current Gross Notional Function with the following modifications: (1) the concentration scalar will be removed; and (2) the maximum DST would be replaced by series-tenor specific DST values based on the series and tenor of the relevant HY and IG positions, as applicable.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CME has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

CME's currently approved CDS margin methodology utilizes a ''multi-factor'' portfolio model to determine margin requirements for CDS instruments. The model incorporates risk-based factors that are designed to represent the different risks inherent to CDS products. The factors are aggregated to determine the total amount of margin required to protect a portfolio against exposures resulting from daily changes in CDS spreads. For both total and minimum margin calculations, CME evaluates each CDS contract held within a portfolio. These positions are distinguished by the single name of the underlying entity, the CDS tenor, the notional amount of the position, and the fixed spread or coupon rate. For consistency, margins for CDS indices in a portfolio are handled based on the required margin for each of the underlying components of the index.

CME proposes to make an adjustment to one particular component of its current CDS margin model, the liquidity risk factor. This CDS margin model component is designed to capture the risk that concentrated positions may be difficult or costly to unwind following the default of a CDS clearing member.

The Liquidity Risk Factor in CME's Current CDS Margin Model

The current liquidity/concentration factor (''Liquidity Factor'') of CME's margin methodology for a portfolio of CDS indices is the product of (1) The gross notional amount for each family (i.e., CDX IG or CDX HY) of CDS positions in a portfolio (2) the current bid/ask of the 5 year tenor of the ''on the run'' (OTR) contract (3) the Duration/Series/Tenor (''DST'') factor and (4) a concentration factor based upon the gross notional for each of the CDX IG and CDX HY contracts (''Gross Notional Function''). The associated margin for a CDS portfolio attributed to the Liquidity Factor is the sum of the Liquidity Factor calculations for each family of CDS positions in the portfolio.

The calculation of the Liquidity Factor is based on the premise that the 5-year OTR index is the most liquid CDS index product. As such, the methodology is designed to evaluate the liquidity exposure of each position in a CDS portfolio relative to the 5-year OTR index.

For each index family (i.e., CDX IG and CDX HY), a DST matrix is calculated based on the historical bid-ask averages of each cleared position relative to the OTR 5-year historical bid-ask averages. Then, the maximum DST values are used as the DST factors. Such maximum DST factors are then applied to the product of 5-year OTR bid-ask spread (adjusted for duration for CDX IG only) and the Gross Notional of all positions within each index family. The resulting products are further scaled by concentration factors in order to account for oversized (as measured by Gross Notional) portfolios. The concentration factors are based on exponential functions of the Gross Notional of each index family in a given portfolio.

Proposed Changes to the Liquidity Risk Factor

As liquidation costs are dependent on the risk in a portfolio, CME is proposing to use an index portfolio's market risk rather than its gross notional as the basis for determining the margins associated with the Liquidity Factor. The proposed changes would calculate the Liquidity Factor as the sum of two components:

(1) A concentration charge for market exposure as a function of absolute Spread DV01 (a portfolio sensitivity to 1% par spread shock); and

(2) A concentration charge for portfolio basis exposure as a function of Residual Spread DV01 (which is the difference between the Gross Spread DV01 and the Net Spread DV01 of the portfolio).

CME expects that these proposed changes would not generally impact smaller portfolios whose liquidation costs are driven by the market bid/ask spread rather than by the cost of hedging, and are therefore adequately captured by the existing Liquidity Factor methodology. To account for the risks associated with such smaller portfolios, CME also proposes to establish a floor component to the Liquidity Factor using the current Gross Notional Function described above with the following modifications: (1) The concentration scalar would be removed as concentration risk would already be accounted for by the concentration charge component outlined above; and (2) the maximum DST would be replaced by series-tenor specific DST values based on the series and tenor of the relevant HY and IG positions, as applicable. CME expects that large (by notional amount) portfolios will be impacted by the proposed changes more than smaller portfolios.

The proposed liquidity risk factor model adjustments do not require any changes to rule text in the CME rulebook and do not necessitate any changes to CME's CDS Manual of Operations. The change will be announced to CDS market participants in an advisory notice that will be issued prior to implementation.

CME believes the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder, including Section 17A of the Exchange Act.[3] The enhancements to CME's current CDS margin methodology will facilitate the prompt and accurate settlement of derivative agreements, contracts and transactions for which CME is responsible and will contribute

[3] 15 U.S.C. 78q–1.

to the safeguarding of securities and funds in CME's custody or control or for which CME is responsible. CME believes the proposed rule change accomplishes those objectives because the changes are designed to incorporate how the liquidity risk factor is affected by not only portfolio concentration based on gross notional, but also the composition of the portfolio based on an underlying strategy. CME believes the proposed rule change would therefore better align CME's margin methodology with the liquidity profile of the actual instruments in the portfolio and would therefore contribute to the safeguarding of securities and funds in CME's custody or control or for which CME is responsible.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited comments regarding this proposed rule change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CME–2013–04 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CME–2013–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME and on CME's Web site at *http://www.cmegroup.com/market-regulation/files/sec_19b-4_13-04.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CME–2013–04 and should be submitted on or before May 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10019 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69427; File No. SR–NYSE–2013–21]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Amending NYSE Rule 104 To Codify Certain Traditional Trading Floor Functions That May Be Performed by Designated Market Makers, To Make Exchange Systems Available to DMMs That Would Provide DMMs With Certain Market Information, To Amend the Exchange's Rules Governing the Ability of DMMs To Provide Market Information to Floor Brokers, and To Make Conforming Amendments to Other Rules

April 23, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 9, 2013, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On April 18, 2013, the Exchange filed Partial Amendment No. 1 to the proposal.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend proposes to amend NYSE Rule 104 to codify certain traditional Trading Floor[5] functions that may be performed by Designated Market Makers (''DMMs''),[6] to make Exchange systems available to DMMs that would provide DMMs with certain market information, to amend the Exchange's rules governing the ability of DMMs to provide market

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Partial Amendment No., 1, the Exchange filed the Exhibit 3 which was not included in the April 9, 2013 filing.

[5] NYSE Rule 6A defines the term ''Trading Floor'' to mean, in relevant part, ''the restricted-access physical areas designated by the Exchange for the trading of securities.''

[6] NYSE Rule 2(i) defines the term ''DMM'' to mean an individual member, officer, partner, employee or associated person of a DMM unit who is approved by the Exchange to act in the capacity of a DMM. NYSE Rule 2(j) defines the term ''DMM unit'' as a member organization or unit within a member organization that has been approved to act as a DMM unit under NYSE Rule 98.

information to Floor brokers, and to make conforming amendments to other rules. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 104 to codify certain traditional Trading Floor functions that may be performed by DMMs; these functions were previously described in the Exchange's *Floor Official Manual.* In addition, the Exchange proposes to amend its rules to make Exchange systems available to DMMs that would provide DMMs with certain market information about securities in which the DMM is registered. The Exchange also proposes to amend its rules governing the ability of DMMs to make available certain order and market information to Floor brokers provided that the market participant entering the order had not opted out of such availability. Finally, the Exchange proposes to make clarifying and conforming amendments to other rules.[7] As described below, the Exchange believes that enabling DMMs to perform certain additional Trading Floor functions previously performed by specialists would improve the quality of certain interactions experienced by investors (specifically, by increasing the likelihood of transaction cost-reducing block transactions).

Specifically, on October 31, 2011, NYSE and NYSE Amex LLC (''NYSE Amex'') each filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[8] and Rule 19b–4 thereunder,[9] proposed rule changes to amend Rule 104. The proposals were published for comment in the **Federal Register** on November 17, 2011.[10] The Commission received no comment letters on the Proposals. On December 22, 2011, the Commission extended the time period to February 15, 2012, in which either to approve the Proposals, disapprove the Proposals, or to institute proceedings to determine whether to disapprove the Proposals.[11] The Commission received no comment letters on the Proposals during the extension. On February 15, 2012, the Commission issued an order instituting proceedings to determine whether to disapprove the Proposals.[12] The Commission received six comment letters supporting the Proposals after the Commission instituted proceedings to determine whether to disapprove the Proposals. After the Commission issued a notice of designation of longer period for Commission action on May 14, 2012,[13] the Commission disapproved the proposed rule changes on July 13, 2012.[14]

As discussed more fully below, the Commission's disapproval was based principally on concerns related to the fairness and competitive impact of providing certain order information to Floor participants. The Exchange is submitting the present filing to provide more detailed support demonstrating the consistency of the proposed rule change in general, and the provision of such order information in particular, with Section 6(b)(5) of the Act and to otherwise address the concerns raised by the Commission in its disapproval order. The Exchange believes that the Commission's application of the Act's fairness and competition-related standards must take specific account of the transformational competitive dynamics that have reshaped the role of the Floor over the last decade, particularly with the potential of the proposal to improve size interactions and reduce transaction costs for the public. Accordingly, this filing: (1) Explains the mechanics and operation of the proposal; (2) provides an overview of the reshaped competitive context within which the Floor operates; and (3) offers three detailed scenarios illustrating the potential benefits to the public of making the proposed order information available to Floor participants and a demonstration of how the proposed availability would improve error resolution. The improved order interactions illustrated in the scenarios and the demonstration of improved error resolution explain in detail why the proposed consensual availability of the order information in question should apply not only to orders entered on the Floor, but also to orders entered by off-Floor participants.

DMM Trading Floor Functions

On October 24, 2008, the Commission approved, as a pilot program, certain core rules that govern the current operation of the Exchange.[15] These rules embody the Exchange's ''New Market Model.'' The New Market Model pilot rules include NYSE Rule 104, which sets forth certain affirmative obligations of DMMs, the category of market participant that replaced specialists. DMMs have obligations with respect to the quality of the markets in securities to which they are assigned that are similar to certain obligations formerly held by specialists.

In addition to their trading-related functions and obligations, DMMs, under the New Market Model, provide support on the Trading Floor to assist in the efficient operation of the Exchange market and maintain fair and orderly markets. These Trading Floor functions were performed by specialists before the New Market Model was adopted, and described in the Exchange's *Floor Official Manual.*[16] Under the New

[7] The Exchange's affiliate, NYSE Amex [sic] LLC, has submitted substantially the same proposed rule change to the Commission. *See* SR–NYSEMKT–2013–25.

[8] 15 U.S.C. 78s(b)(1).

[9] 17 CFR 240.19b–4.

[10] *See* Securities Exchange Act Release Nos. 65735 (November 10, 2011), 76 FR 71405 (SR–NYSEAmex–2011–86) (''NYSE Amex Notice'') and 65736 (November 10, 2011), 76 FR 71399 (SR–NYSE–2011–56) (''NYSE Notice'').

[11] *See* Securities Exchange Act Release No. 66036, 76 FR 82011 (December 29, 2011).

[12] *See* Securities Exchange Act Release No. 66397, 77 FR 10586 (February 22, 2012).

[13] *See* Securities Exchange Act Release No. 66981, 77 FR 29730 (May 18, 2012).

[14] *See* Securities Exchange Act Release No. 67437, 77 FR 42525 (July 13, 2012) (''Disapproval Order'').

[15] Securities Exchange Act Release No. 58845, 73 FR 64379 (October 29, 2008) (''New Market Model Release'').

[16] *See 2004 Floor Official Manual, Market Surveillance June 2004 Edition,* Chapter Two, Section I.A. at 7 (''specialist helps ensure that such markets are fair, orderly, operationally efficient and competitive with all other markets in those securities''), Section I.B.3. at 10–11 (''[i]n opening and reopening trading in a listed security, a specialist should * * * [s]erve as the market coordinator for the securities in which the specialist is registered by exercising leadership and managing trading crowd activity and promptly identifying unusual market conditions that may affect orderly trading in those securities, seeking the advice and assistance of Floor Officials when appropriate'' and ''[a]ct as a catalyst in the markets for the securities in which the specialist is registered, making all reasonable efforts to bring buyers and sellers together to facilitate the public pricing of orders, without acting as principal unless reasonably necessary''), Section I.B.4. at 11 (''In view of the

Continued

Market Model, there is a continued need for DMMs to perform these Trading Floor functions. The Exchange proposes to add new subparagraph (j)(i) to Rule 104 to codify these historic functions.[17]

In particular, DMMs perform four categories of Trading Floor functions: (1) Maintaining order among Floor brokers manually trading at the DMM's assigned panel, including managing trading crowd activity and facilitating Floor broker executions at the post; (2) facilitating Floor broker interactions, including either participating as a buyer or seller, and appropriately communicating to Floor brokers the availability of other Floor broker contra-side interest; (3) assisting Floor brokers with respect to their orders, including resolving errors and, for example, inputting Floor interest into Exchange systems in the event of handheld technology outages; and (4) researching the status of orders or questioned trades. The current performance of these four functions can be illustrated as follows:

First, a DMM may maintain order among Floor brokers manually trading at the DMM's assigned panel. For example, where there is significant agency interest in a security, the DMM may help Floor Officials maintain order by managing trading crowd activity and facilitating the execution of one or more Floor broker's orders trading at the post.

Second, a DMM may bring Floor brokers together to facilitate trading, which may include the DMM acting as a buyer or seller. This function is consistent with the floor-based nature of the Exchange's hybrid market. For example, if a DMM is aware that a Floor broker representing buying interest inquired about selling interest in one of his or her assigned securities and later a Floor broker representing selling interest makes an inquiry about buying interest, the assigned DMM may inform the Floor broker representing the buying interest of the other Floor broker's selling interest. In addition, the DMM itself may provide contra-side interest to a Floor broker representing interest at the post.

Third, DMMs may assist Floor brokers with respect to their orders by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker. For example, if a Floor broker's handheld device is not operational, the DMM may assist the Floor broker by entering or canceling broker interest on the Floor broker's behalf.[18]

Fourth, DMMs may research the status of orders or questioned trades. DMMs may do so on their own initiative or at the request of the Exchange or a Floor broker when a Floor broker's hand-held device is not operational, when there is activity indicating that a potentially erroneous order was entered or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.

DMM Access to Exchange Systems

The Exchange proposes to amend Rule 104 to add new subparagraph (j)(ii), which would state that the Exchange may make systems available to a DMM at the post that display the following types of information about securities in which the DMM is registered: (a) Aggregated information about buying and selling interest; [19] (b) disaggregated information about the price and size of any individual order or Floor broker agency interest file, also known as ''e-Quotes,'' except that Exchange systems would not make available to DMMs information about any order or e-Quote, or portion thereof, that a market participant has elected not to display to a DMM; and (c) post-trade information. For the latter two categories, the DMM would have access to entering and clearing firm information and, as applicable, the badge number of the Floor broker representing the order. The systems would not contain any information about the ultimate customer (*i.e.,* the name of the member or member organization's customer) in a transaction. Importantly, aggregated information at each price level about buying and selling interest that is not marked dark is already visible to DMMs. Similarly, aggregated information for interest not marked dark is visible to any market participant beyond the Floor via OpenBook.[20]

Under the proposed rule change, Exchange systems would make available to DMMs disaggregated information about the following interest in securities in which the DMM is registered: (a) The price and size of all displayable interest submitted by off-Floor participants; and (b) all e-Quotes, including reserve e-Quotes, that the Floor broker has not elected to exclude from availability to the DMM.[21] Importantly, both Floor brokers and off-Floor participants would have the continued ability to enter partially or completely ''dark'' orders that are not visible to the DMM, which would prevent any communication about such interest between the DMM and Floor brokers. The Exchange believes that it is appropriate to provide DMMs with this disaggregated order information because the information will assist DMMs in carrying out their Trading Floor functions. In addition to the potential for improved interaction of larger-sized orders illustrated by the three scenarios and related information below, providing DMMs with access to the disaggregated order information will contribute to the DMMs' ability to carry out their responsibility for managing the auction market process at the Exchange, which includes the function of bringing buyers and sellers together to facilitate trading. The proposed rule change would specifically prohibit DMMs from using any trading information available to them in Exchange systems, including disaggregated order information, in a manner that would violate the Exchange rules or federal securities laws or regulations.

The Exchange believes that the proposed rule change would contribute substantially to the fair and orderly operation of the Exchange Trading Floor. As illustrated in detail below, the proposed consensual availability of the order information in question offers the potential for improved error resolution. DMM assistance at the post through the performance of the Trading Floor functions continues to be an invaluable resource to minimize any disruption to the market, particularly if the Exchange or a customer is experiencing a systems issue; the Exchange systems that provide disaggregated order information play a pivotal role in that assistance. Allowing DMMs to have access to those Exchange systems to perform the Trading Floor functions is more efficient

specialist's central position in the Exchange's continuous two-way agency auction market, a specialist should proceed as follows * * * [e]qually and impartially provide accurate and timely market information to all inquiring members in a professional and courteous manner.''), and Section I.B.5. at 12 (A specialist should ''[p]romptly provide information when necessary to research the status of an order or a questioned trade and cooperate with other members in resolving and adjusting errors.''). Relevant excerpts of the *2004 Floor Official Manual* are attached as Exhibit 3 of this filing.

[17] The Exchange proposes to redesignate the rule text currently set forth in section (j) as section (k) of Rule 104.

[18] The Exchange maintains a full audit trail of all Floor broker orders, including information reflecting entry, modification, cancellation, and execution of such orders.

[19] Exchange systems make available to DMMs aggregate information about the following interest in securities in which the DMM is registered: (a) All displayable interest submitted by off-Floor participants; (b) all Minimum Display Reserve Orders, including the reserve portion; (c) all displayable Floor broker agency interest files (''e-Quotes''); (d) all Minimum Display Reserve e-Quotes, including the reserve portion; and (e) the reserve quantity of Non-Display Reserve e-Quotes, unless the Floor broker elects to exclude that reserve quantity from availability to the DMM.

[20] Floor brokers currently have the ability to make an order visible to the DMM but not in OpenBook. They would maintain that ability under the proposed rule.

[21] The Exchange previously permitted DMMs to have access to Exchange systems that contained the disaggregated order information described above. The Exchange stopped making such information available to DMMs on January 19, 2011. *See* Information Memo 11–03.

than diverting Exchange resources to attend to individual Floor broker issues, particularly when the DMMs are ready and able to perform the same functions.

Ability of DMMs To Provide Market Information on the Trading Floor

The Exchange proposes to modify the terms under which DMMs would be permitted to provide market information to Floor brokers and visitors on the Trading Floor. Specifically, Rule 104(j)(iii) would permit a DMM to provide the market information to which he or she has access under proposed Rule 104(j)(ii) to: (1) A Floor broker in response to an inquiry in the normal course of business; or (2) a visitor to the Trading Floor for the purpose of demonstrating methods of trading. This aspect of the proposal builds on and modifies current NYSE Rule 115, and the Exchange therefore proposes to delete NYSE Rule 115, which covers the same subject.[22]

Currently, NYSE Rule 115 provides that a DMM may disclose market information for three purposes. First, a DMM may disclose market information for the purpose of demonstrating the methods of trading to visitors on the Trading Floor. This aspect of current Rule 115 would be replicated in proposed Rule 104(j)(iii)(B). Second, a DMM may disclose market information to other market centers in order to facilitate the operation of the Intermarket Trading System (''ITS''). This text is obsolete as the ITS Plan has been eliminated and therefore would not be included in amended Rule 104.[23] Third, a DMM may, while acting in a market making capacity, provide information about buying or selling interest in the market, including: (a) Aggregated buying or selling interest contained in Floor broker agency interest files other than interest the broker has chosen to exclude from the aggregated buying and selling interest; (b) aggregated interest of Minimum Display Reserve Orders; and (c) the interest included in DMM interest files, excluding Capital Commitment Schedule (''CCS'') interest as described in Rule 1000(c), in response to an inquiry from a member conducting a market probe [24] in the normal course of business.

Proposed Rule 104(j)(iii) would permit DMMs also to provide disaggregated and post-trade order information to Floor brokers.[25] Broadening the scope of information that DMMs can provide Floor brokers will assist DMMs with carrying out their historical function of bringing Floor brokers together to facilitate block and other large transactions, as demonstrated by the scenarios illustrated herein. The Exchange notes that the proposed visibility is not without precedent—Rule 115 previously allowed Exchange specialists to provide disaggregated order information to Floor brokers prior to adoption of the Hybrid Market.[26] And, as noted above, both Floor brokers and off-Floor participants currently have and will continue to have the ability to enter partially or completely ''dark'' orders that are not visible to the DMM. DMMs, in other words, would be unable to see or disseminate information about such ''dark'' orders or the dark portion of the orders in response to an inquiry from a Floor broker. When providing information, the individual DMM is responsible for fairly and impartially providing accurate and timely information to all inquiring Floor brokers about buying and selling interest in his or her assigned security.

Proposed Rule 104(j)(iii) also would permit a DMM to provide market information to a Floor broker in response to a specific request by the Floor broker to the DMM at the post, rather than specifying that the information must be provided ''in response to an inquiry from a member conducting a market probe in the normal course of business,'' as currently provided in Rule 115. The Exchange believes that the term ''market probe'' no longer accurately reflects the manner in which DMMs and Floor brokers interact on the Trading Floor. Rather, the Exchange believes that the Floor broker's normal course of business, as an agent for customers, includes both seeking market probes into the depth of the market as well as seeking out willing contra-side buyers and sellers in a particular security. In addition, the rule would specify that a Floor broker may not submit an inquiry to the DMM by electronic means and that the DMM may not use electronic means to transmit market information to a Floor broker in response to an inquiry. Under the proposed rule change, Floor brokers would not have access to Exchange systems that provide disaggregated order information, and they would only be able to access such market information through a direct interaction with a DMM at the post.

The Exchange believes that providing Floor brokers with access to the disaggregated order information would serve a valuable function by increasing the ability of Floor brokers to source liquidity and provide price discovery for block transactions, as demonstrated in the three detailed scenarios below. In particular, the ability of Floor brokers to receive the disaggregated order information should, in turn, enhance their ability to facilitate transactions for their customers by identifying market participants with trading interest that could trade with the Floor brokers' customers. Floor brokers have historically served this role on behalf of their customers, which include institutional clients and block-trading desks, and they continue to perform this agency function today.

Effect of Market Structural Changes on the Exchange and the Floor

Before illustrating in detail how the proposed changes will facilitate block trades and expedite error resolution, the Exchange believes it is essential to take into account the structural and competitive changes the Exchange and the Floor have experienced in recent years. Indeed, the Act's fairness and competition-related standards cannot appropriately guide the Commission's review absent a concrete recognition of the reshaped competition of the Exchange and the Floor and the array of execution choices available to market participants today. Toward that end, it must be recognized that the Exchange has undergone fundamental, structural changes since 2006 and has been reshaped by the competitive dynamics that have accompanied these changes. The reforms and the intensely competitive environment within which they have taken place have their roots in the Commission's effort to modernize and strengthen the national market system for equity securities through

[22] Rule 115 will be redesignated as ''Reserved.'' The Exchange further proposes to make conforming amendments to Rules 13, 98 Former, and 104(a)(6).

[23] *See* Securities Exchange Act Release No. 55397 (March 5, 2007), 72 FR 11066 (March 12, 2007) (Intermarket Trading System; Notice of Filing and Immediate Effectiveness of the Twenty Fourth Amendment to the ITS Plan Relating to the Elimination of the ITS Plan).

[24] Generally, a market probe refers to when a Floor broker is seeking to ascertain the depth of the market in a security to determine at what price point a security may trade. However, it is a term of art whose meaning is not codified.

[25] Because DMMs on the Trading Floor do not have access to CCS interest information, the proposed rule does not specify that DMMs would not be disseminating such information.

[26] *See* NYSE Regulation Information Memo 05–5 (stating that, under Rule 115, specialists may disclose the identity of the members or member organizations representing any orders entrusted to the specialist). The Exchange amended Rule 115 in connection with the Hybrid Market because at that time, there was no way for Floor brokers to enter fully dark electronic interest. Now that Exchange systems can accept fully dark electronic interest from both Floor brokers and off-Floor participants, the Hybrid Market change to Rule 115 has been obviated and the rule can return to its former status.

Regulation NMS.[27] In particular, in March 2006, the Commission approved the beginning of NYSE's historic shift ''from a floor-based auction market with limited automated order interaction to a more automated market with limited floor-based auction market availability.'' [28] With the approval of the ''Hybrid Market,'' the NYSE began the substantial expansion of automatic execution and the ability of its Floor members to participate in its automated market electronically.[29] At the time of approval, automatic executions on the NYSE represented approximately 11% of its market share volume, and the bulk of executions occurred manually in its floor-based auction.[30] The average speed of execution was over ten seconds.[31] In 2005, the average trade size in NYSE-listed securities was 724 shares.[32] NYSE's share of consolidated volume in NYSE-listed names for the year preceding the approval of the Hybrid Market was 79.1%.[33]

Roughly two years later, the NYSE proposed further and substantial structural reforms with its New Market Model.[34] Foremost in significance were: (1) The phasing out of the specialist system and the concurrent creation of the DMM; (2) the alteration of the NYSE's longstanding priority and parity rules to allow DMMs to trade on equal footing with other market participants where the specialist previously had been obligated to yield to public customer orders in the book; and (3) the elimination of the advance electronic ''look'' at incoming orders that had been a historical feature of the specialist system.[35] By 2009, the average speed of execution was less than a second, and the average trade size in NYSE-listed securities had fallen to 268 shares.[36] In 2009, the year following the adoption of the New Market Model, NYSE's share of consolidated volume in NYSE-listed names was 25.1%.[37] At the risk of stating the obvious, these transformative changes have had the effect of reducing substantially the scope and utility of market information accessible to DMMs and Floor brokers—a perspective from a point of sale with roughly 80% market share differs starkly from one with less than 25%. Such changes demonstrate the flexibility that the market has with respect to utilizing different venues and various market models that best suit their needs.

Today, the Exchange continues to operate a limited Floor-based auction model. Not surprisingly, the Floor itself reflects directly the transformation recounted above. The current Floor broker community is distinguished in significant part by its embrace of technology, as reflected by the introduction of Floor broker algorithms in 2009. Though competitive dynamics have reduced the Floor's numbers, significant demand remains among the most informed market participants for the technology-enabled services of today's Floor brokers.

The Exchange seeks to compete by offering market participants a product that is entirely distinct from the trading venues of its competitors in one essential respect—the integration of human judgment into the price discovery process at a single, physical point of sale for each security.[38] This product stands more or less alone among a diverse array of completely automated execution venues available to investors today. It is important to note that the nature and extent of the integration of human judgment, delivered through DMMs and Floor brokers, is driven by the demands of informed consumers—there is no shortage of competing execution venues that have no DMMs, Floor brokers or substantial equivalents. Moreover, those market participants who choose to trade on the Exchange have no obligation to utilize the services of a Floor broker, or to use those services in a particular way. Whether and how Floor brokers are used today reflects directly, in other words, the judgment of market participants as to the value the Floor adds.

As demonstrated below, this wholly consensual integration of human judgment at the point of sale, and in particular the visibility of certain limited order information discussed herein to DMMs and Floor brokers, serve legitimate Floor functions (as well as broader market structure goals) in three important respects. They: (1) Increase the possibility that buyers and sellers of size positions can meet, thereby enhancing opportunities to reduce transaction costs; (2) expedite the discovery and resolution of errors, thereby reducing disruptive impacts and promoting fair and orderly markets; and (3) leverage the informed choices of users, allowing the interplay of competitive forces to determine the scope and nature of human interaction in the price discovery process.[39] Acute concerns with respect to the potential benefits of the referenced order information in the hands of DMMs and Floor brokers, the Exchange respectfully submits, are misplaced. The information in question would add only a view of the components and the entering and clearing firm (not the customer) for trading interest that is already visible in the aggregate to DMMs today. Given the clear obligations of DMMs and the strictly agency capacity of Floor brokers, the benefit attributable to the proposed visibility would enure to the benefit of the customer or member placing the order, not the DMM or Floor broker. The utility of the information, therefore, lies in its potential to bring buyers and sellers of size together, not to advantage intermediaries.

Benefits of Proposed Rule to Trading Floor and Investors

The Commission's Disapproval Order focused on the availability to DMMs and communication by DMMs to Floor brokers of disaggregated order information (specifically, the price and size of individual orders and the identity of the entering and clearing firms for such orders). Before turning to the particulars of the Disapproval Order, the Exchange would respectfully underscore its contention that the acute concern with respect to the availability of disaggregated order information to DMMs and Floor brokers is misplaced. The incremental information to be made available is demonstrably useful to DMMs, as illustrated in the scenarios and situations below, in bringing together buyers and sellers of block positions and in expediting the resolution of errors and would thereby promote both order interaction and orderly markets. However, the information simply does not add to a DMMs trading view in any meaningful way. It does no more than make visible to the DMM and available to Floor brokers the component orders of trading interest *that is already visible to the DMM in the aggregate* (and to off-Floor market participants via OpenBook) and the entering and clearing firm and Floor

[27] *See* Securities Exchange Act Release No. 51808, 70 FR 37496 (June 29, 2005) (''NMS Adopting Release'').

[28] *See* Securities Exchange Act Release No. 53539, 71 FR 16353 (March 31, 2006).

[29] *Id.*

[30] *Id.*

[31] *See* Securities Exchange Act Release No. 61358, FR 3594, 3595 (January 21, 2010) (''Equity Market Structure Release'').

[32] *Id.*

[33] *Id.* at 3595.

[34] *See* New Market Model Release.

[35] *Id.* at 64380, 64387–88.

[36] *Id.*

[37] Equity Market Structure Release at 3595.

[38] *See* S. Rept. 94–75 (1975) (''This is not to say that it is the goal of [the 1975 Amendments] to ignore or eliminate distinctions between exchange markets and over-the-counter markets or other inherent differences or variations in components of a national market system. Some present distinctions may tend to disappear in a national market system, but it is not the intention of the bill to force all markets for all securities into a single mold.'')

[39] *See* H.R. Rept. 94–229 (1975).

broker, if any. Importantly, the benefit attributable to the availability of such information would accrue as a practical matter to the customer or member organization behind a trade and not to the DMM or Floor broker involved in the trade.

In finding that the proposed rule changes were not consistent with the requirements of the Act, the Commission stated that: (1) The Exchange and commenters had not explained how the particular information proposed to be provided would further legitimate Floor functions; (2) the Exchange was ''not proposing to require any additional obligations from DMMs and Floor brokers in exchange for the additional information''; (3) the Commission was concerned that the benefit to Floor members of receiving disaggregated order information may be more than slight, ''particularly with respect to less liquid securities where order information is less likely to become rapidly stale''; and (4) the provision of disaggregated order information to Floor Members and, by extension exclusively to Floor broker customers ''could have a detrimental effect on competition between on-Floor and off-Floor members of the Exchanges.'' This revised proposed rule change addresses these concerns.

Scenarios Illustrating How the Particular Information Proposed To Be Provided Would Further Legitimate Floor Functions

The Commission stated in the Disapproval Order that neither the Exchange nor the commenters have explained how making available ''disaggregated information about public orders on the Exchange books as well as Floor broker e-Quotes'' to DMMs and Floor brokers would further legitimate Floor functions. The scenarios below illustrate how the particular information proposed to be provided—the price and size of individual orders, the identity of the entering and clearing firm, and Floor broker badge number for such orders—would serve the goals of facilitating block trades and expediting error resolution. Importantly, each of the scenarios makes clear that the benefits to the public flow from not only the proposed consensual availability of the information in question for orders entered on the Floor, but also those entered by off-Floor participants.

Scenario 1: DMM Facilitates Block Trade Between Floor Broker and Upstairs Seller by Sharing Price, Size, and Entering Firm

Assume a pension fund customer gives Floor broker a 20,000 share order to buy ABC, a mid-cap stock, at up to $10.08 at 11:00 a.m. when the PBBO for the stock is $10.03 by $10.06 with 500 shares on displayed on each side. There is no crowd at the ABC post at the time the order is received, but Floor broker can see from the tape that the stock is trading electronically on the Exchange. On the book a penny away from the inside offer at $10.07, there is a sell order for 10,000 that has been entered by Member Organization. There is no Floor broker representing the sell order, and there are no Floor broker e-Quotes on the book. Floor broker tells DMM for ABC that he or she represents a buyer of size beyond the displayed market. Currently, the DMM is permitted to inform the Floor broker of the aggregate selling interest at different price points on the book, but may not access or provide the identity of the Member Organization—an off-floor participant—that entered such selling interest. Under the proposed rule, the DMM could inform Floor broker that the off-Floor Member Organization is an entering firm for an order to sell 10,000 shares at $10.07. Floor broker could then contact the upstairs desk of Member Organization or Member Organization's on-floor representative, if any, who could then contact his or her upstairs desk, to explore a possible transaction.

Assume that the 10,000 share sell order that Member Organization sent to the Exchange is a child of a 30,000 order entered electronically by a mutual fund customer into Member Organization's customer-facing execution management system with non-displayed price discretion to $10.05. (The parent order size and price discretion obviously would not be visible to the DMM or Floor broker.) Knowing Member Organization's identity and the size and price of the trading interest Member Organization has entered into Exchange systems, the Floor broker may now contact Member Organization or Member Organization's on-floor representative and the Floor broker can indicate the size of the buying interest he or she is representing. In this respect, the Floor broker now can enter into negotiations directly, similar to how off-Floor participants, particularly broker dealers that internalize flow from their customers, can reach out directly to other broker dealers to negotiate block-sized trades. By making contact, Member Organization and Floor broker may agree to do a larger transaction at a more aggressive price. Assume Floor Broker and Member Organization agree to 20,000 shares at $10.05.

Both sides of the trade would have secured a size transaction within the parameters of their stated limit. More importantly, both would have avoided the potential market impact that a series of smaller size transactions might have produced. The transaction in all likelihood would not have occurred without the Floor broker's knowledge of the price and size of the order and the identity of the Member Organization entering it. The Floor broker, in other words, would have had no incentive to reveal that he or she represented a buyer without the meaningful possibility of an interaction that was indicated by the size and price of the trading interest and the identity of the Member Organization representing it.

The Disapproval Order notes that the Commission can envision an argument whereby enabling DMMs to see Floor broker e-Quotes or the identity of Floor brokers would facilitate the bringing together of buyers and sellers of large orders, apparently suggesting that limiting DMM visibility to this Floor broker interest would serve this end of order interaction effectively. The above scenario illustrates why limiting access only to other Floor broker interest would ignore a large segment of the trading population, and limit the ability of buyers and sellers to negotiate directly, regardless of their location. Specifically, allowing DMMs to access the disaggregated information of off-Floor participants permits DMMs to facilitate block transactions between Floor brokers and those same off-Floor participants. In the above scenario, the member organization that has not elected to utilize a Floor broker is still able to benefit from the proposed rule changes by permitting his order information to be relayed to Floor brokers on a disaggregated basis. And importantly, the member organization *has permitted* the order information to be relayed on a disaggregate basis: If the member organization determines that the cost of exposing an order on a disaggregated basis outweighs any potential benefit, then the member organization can enter the order dark. Thus, the member organization can determine—on an individual basis—the benefits and costs of the permitting its own information disclosed on a disaggregated basis. Visibility of price, size, and entering firm opens up a wider range of wholly consensual channels of communication that more fully and effectively enhance the potential for order interaction. Put another way,

Member Organization remains at all time in full control of the information he or she is duty-bound to protect as agent for the mutual fund seller—when entering the order on the Exchange and making it visible to the DMM and Floor brokers (*i.e.,* Member Organization could have decided to enter the order dark), and when he engages with Floor broker following Floor broker's initiation of contact (*i.e.,* Member Organization could have declined to engage with the Floor broker when he or she initiated contact). Moreover, with Floor broker share of Exchange volume currently at approximately 9%, the contra-side interest represented by a Floor broker in any given situation will likely be only a small subset of total available interest.

Scenario 2: DMM Facilitates Block Trade by Sharing Post-Trade Information With Floor Broker

An interaction similar to Scenario 1 could be facilitated by a DMM sharing post-trade information with a Floor broker pursuant to the proposed rule. Assume Floor broker has the same 20,000 share order to buy ABC from his or her pension fund customer. Assume in this scenario that Member Organization has no current interest entered in Exchange systems, but was a seller on the Exchange earlier in the day. Assume the upstairs desk of Member Organization has the same parent order of 30,000 shares of ABC as in Scenario 1. Floor broker approaches the DMM and asks if there is enough sell-side interest to accommodate. DMM tells Floor broker that there is no interest to accommodate, but that Member Organization was a seller earlier in the day. As in Scenario 1, assume there is no Floor broker representing the seller. Floor Broker approaches the upstairs desk of Member Organization or Member Organization's on-floor representative, if any, who could then contact his or her upstairs desk, and achieves the same result as in Scenario 1. As with Scenario 1, the benefit of the interaction illustrated here stems from the consensual availability of information related to orders entered by an off-Floor participant.

Scenario 3: DMM Facilitates Block Issuer Repurchase Transaction by Sharing Price, Size, and Entering Firm

Assume an Exchange-listed issuer engages a Floor broker to handle a Rule 10b–18 repurchase with a goal of repurchasing 500,000 shares at a maximum price of $10.15. Assume the highest current independent published bid is $10.03, the last independent transaction price reported was $10.08, and the offer is quoted at $10.07. The issuer wishes to make a block purchase of up to 100,000 at $10.07 or better.[40] The Floor broker approaches the DMM and asks about selling interest at the $10.07 price level. Under the proposed rule, the DMM could inform Floor broker that Member Organization is a seller of 10,000 shares at $10.07. Assume as in the prior scenarios that there is no Floor broker representing the selling interest and that the Floor broker initiates contact with the upstairs desk of Member Organization or Member Organization's on-floor representative, if any, who could then contact his or her upstairs desk, and finds additional selling interest upstairs as in Scenario 1. Assume the Floor broker and Member Organization agree upon a transaction of 100,000 shares at $10.07.

In this scenario, the issuer receives a large fill at better than the last independent transaction price, and both sides have minimized the impact of their transaction. As the Commission has previously stated in considering block purchases by issuers, ''the market impact of a block purchase is likely to be less than that of a series of purchases of smaller amount that in the aggregate are equal in size to the block but are accomplished over a period of time.'' [41] As with Scenarios 1 and 2, the benefit to the repurchasing issuer and the seller illustrated here stems from the consensual availability of information related to orders entered by an off-Floor participant.

Situations Where DMM Access to Entering Firm's Identity Would Prevent Errors or Expedite Resolution Thereof

In addition to promoting the interaction of buyers and sellers in size transactions, DMM access to the identity of firms entering individual orders would improve a DMM's ability to identify erroneous trades and to intervene where entering firms, whether a Floor broker or off-Floor participant, are experiencing technology problems. The proposed visibility would expedite the identification and possible prevention of such errors. Moreover, the Exchange's recent experience in identifying the source of millions of unintended trades in more than 150 symbols attributable to a member's software malfunction [42] confirms the potential contribution of the proposed visibility to the diagnosis and resolution of problems and the maintenance of orderly markets. Specifically, in that situation, the DMMs were the first to identify the anomalous trades and report the trades to Exchange officials. The Exchange believes that had DMMs also been able to see the commonality of the entering firm in the spike of incoming orders, the source of the disruption may have been identified more quickly, potentially avoiding millions of dollars in firm losses. Finally, entering firm information can serve to mitigate the effect of less severe but still important technology problems, such as Floor broker handheld outages. DMMs currently are unable to identify individual Floor broker orders and cancel them during handheld outages; the proposed rule would enable them to perform this important function.

Burdens Placed on DMMs and Floor Brokers

The Disapproval Order notes that the Exchange was ''not proposing to require any additional obligations from DMMs and Floor brokers in exchange for the additional information.'' [43] As noted above, the Exchange does not believe the additional information adds

[40] Rule 10b–18 provides an issuer with a safe harbor from liability under Section 9(a)(2) of the Act and Rule 10b–5 under the Act based on the manner, timing, price, and volume of their repurchased when in accordance with Rule 10b–18's conditions. Rule 10b–18(b)(4) provides the condition that the total volume of the purchases cannot exceed 25 percent of the average daily total volume for that security; however, once per week the issuer may make one block purchase without regards to the volume limit if no other Rule 10b–18 purchase takes place on the same day and the block purchase is not included when calculating a security's four week average daily total volume.

[41] *See* Exchange Act Release No. 17222 (October 17, 1980) (''10b–18 Proposing Release''). Rule 10b–18 was originally proposed as Rule 13e–2.

[42] *Loss Swamps Trading Firm,* Wall Street Journal, August 2, 2012.

[43] *See* Disapproval Order at 10. The Exchange believes that a close reading of the precedent indicates that this level of scrutiny of the incremental obligations associated with a proposal such as this one is not required. The source of the scrutiny stems from New Market Model Order in which the NYSE proposed fundamental structural changes, including phasing out the specialist system and a wholesale alteration of the NYSE's historic priority and parity rules. *See* Securities Exchange Act Release No. 58845, 73 FR 64379 (October 29, 2008) (''New Market Model Release''). What was proposed in the New Market Model, in other words, called for a review by the Commission that was necessarily intense, in stark contrast with the modest changes proposed here. Additionally, in support of what would be regarded as ''special advantages'' and ''rewards that are not disproportionate to the services provided,'' the Commission previously cited a series of orders approving proposals that generally involve the creation or registration of a new class of market maker or participation of an existing class in a new market. Those proposals, similar to the New Market Model, were structural in nature and in stark contrast to the limited nature of this proposed rule change. Furthermore, the principal market participant impacted by the present proceeding, Floor brokers, is not a market maker at all, but an agent, rendering much of the referenced precedent factually distinct. Accordingly, the Exchange respectfully suggests that the level of scrutiny associated with the precedents cited is not required here.

meaningfully to the trading view of the DMM, and that any such addition would benefit customers, not DMMs and Floor brokers. Indeed, the function of providing disaggregated order information to Floor brokers upon request would be an administrative burden to DMMs rather than a benefit. Additionally, as noted above, Floor brokers, as agents, would receive no benefit attributable to the information, as such benefit would flow directly and entirely to the customer whose order they are representing and the contra side to it. Moreover, the Exchange believes, based on fundamental changes in the competitive context since the approval of the New Market Model and the continuing and significant obligations of DMMs and Floor brokers, that the proposed availability of disaggregated order information would not constitute a disproportionate benefit. In other words, the potential value of the information in question has been substantially diminished since 2006 in that that DMMs only have information about orders at the Exchange, which represent approximately 22% of market-wide volume in Exchange-listed stocks across the market.

Notwithstanding the DMM's evolving role in the overall trading of Exchange-listed securities, the obligations and restrictions placed on DMMs and Floor brokers have remained unchanged. In addition, the manual process by which disaggregated order information is accessed reduces to a minimum any potential benefit. As demonstrated by the scenarios above, perhaps its principal value is the opportunity it offers to open a consensual dialogue with a counterparty—an opportunity aligned with both the interests of other Floor and non-Floor members as well as investors. The disaggregated order information, while inconsequential from a trading perspective, is thus important administratively in clearing the way to size interactions, reducing transaction costs, and enhancing the quality of the Exchange's market.

Specifically, with respect to the continuing and significant burdens on DMMs, pursuant to NYSE Rule 104, a function of a DMM is:

> [T]he maintenance, in so far as reasonably practicable, of a fair and orderly market on the Exchange in the stocks in which he or she is so acting. The maintenance of a fair and orderly market implies the maintenance of price continuity with reasonable depth, to the extent possible consistent with the ability of participants to use reserve orders, and the minimizing of the effects of temporary disparity between supply and demand. In connection with the maintenance of a fair and orderly market, it is commonly desirable that a member acting as DMM engage to a reasonable degree under existing circumstances in dealings for the DMM's own account when lack of price continuity, lack of depth, or disparity between supply and demand exists or is reasonably to be anticipated.[44]

Additionally, any transaction by a DMM for the DMM's account must ''be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock.'' [45]

Furthermore, the Exchange notes that any non-public market information that a DMM receives through Exchange systems would be subject to specific restrictions as ''non-public order information'' [46] under Exchange Rule 98. For example, Exchange Rule 98(c)(2)(A) would require DMMs to maintain the confidentiality of any such non-public market information and would prohibit the DMM member organization's departments, divisions, or aggregation units that are not part of the DMM unit, including investment banking, research, and customer-facing departments, from having access to that information. In addition, Rule 98 sets forth restrictions on access to non-public order information by the off-Floor locations of a DMM unit, including restrictions on the ability of a DMM located on the Trading Floor from communicating directly with off-Floor individuals or systems responsible for making off-Floor trading decisions.[47]

The manner by which the DMM would access disaggregated order information aligns precisely with the information's relative lack of trading utility and its administrative significance in facilitating size interactions. A DMM can access the disaggregated order information only while located at the post on the Trading Floor, and a DMM's ability to access the disaggregated order information is largely manual. The DMM must query the specific information about a particular security, which limits the number of securities about which disaggregated order information can be accessed at any given time. Importantly, Exchange systems would not provide disaggregated order information to the algorithmic trading systems of any DMM unit,[48] and would not support any electronic dissemination of the disaggregated order information to other market participants. As noted above, participants who do not want the DMM to have access to disaggregated order information have the option to enter dark interest that is not visible to the DMM in disaggregated form. The Exchange also notes that the proposed rule change would specifically prohibit DMMs from using any trading information available to them in Exchange systems, including disaggregated order information, in a manner that would violate the Exchange rules or federal securities laws or regulations.[49]

Benefit to Floor of the Proposed Availability of Disaggregated Order Information

The Disapproval Order also raised concerns about the possible benefit to Floor members of the proposed availability of order information, stating that the benefit to Floor members may be more than slight, ''particularly with respect to less liquid securities where order information is less likely to become rapidly stale.'' Respectfully, the Commission's concern about the possible benefit to Floor members is misplaced, irrespective of whether the security is highly liquid or less liquid.

It has been noted above, but is worth stressing, that DMMs currently have access to aggregated order information that fully reflects the size of trading interest for a particular security on the Exchange that has not been designated as dark by the entering firm. Similarly, such aggregated information for interest not marked dark is visible to any market participant beyond the Floor via OpenBook. What is proposed, therefore, is *not* making a new segment of trading interest visible to DMMs, but rather

[44] *See* NYSE Rule 104(a)(1).

[45] *See* NYSE Rule 104(g).

[46] NYSE Rule 98(b)(7) defines the term ''non-public order'' to mean ''any order, whether expressed electronically or verbally, or any information regarding a reasonably imminent non-public transaction or series of transactions entered or intended for entry or execution on the Exchange and which is not publicly available on a real-time basis via an Exchange-provided datafeed, such as NYSE OpenBook® or otherwise not publicly available. Non-public orders include order information at the opening, re-openings, the close, when the security is trading in slow mode, and order information in the NYSE Display Book® that is not available via NYSE OpenBook®.''

[47] *See* Rules 98(d)(2)(B)(i)–(iii), (f)(1)(A)(i)–(ii), and (f)(3)(C)(ii). In addition, Rule 98(c)(2)(A)(ii) provides that a DMM may make available to a Floor broker associated with an approved person or member organization any information that the DMM would be permitted to provide under Exchange rules to an unaffiliated Floor broker.

[48] The order information in these systems would be available for a DMM to view manually at the post and as such is different from the advance order-by-order information that DMM trading algorithms previously received before implementation of the New Market Model pilot (sometimes referred to as ''the look''). Under the proposed rule change, as is the case today, DMM trading algorithms would have the same information with respect to orders entered on the Exchange, Floor broker agency interest files or reserve interest as is disseminated to the public by the Exchange. *See* Rule 104(b)(iii).

[49] *See* Proposed NYSE Rule 104(j)(ii).

making the components of already visible trading interest available, along with the entering firm, clearing firm, and badge number of the Floor broker, if any. Since the proposal would not increase the visibility of trading interest in less liquid securities, the question of whether such information is more or less likely to remain fresh or become stale is not at issue in a meaningful way. The point of the proposed availability of order information is to enable Floor brokers to search more effectively for size counterparties for their customers and to expedite the ability of DMMs to resolve errors, not to improve the trading position of DMMs.

Moreover, the question of staleness is further beside the point when one remembers that DMM trading today is predominantly automated and algorithmic. Even if the proposed visibility included trading interest that was not currently visible—it does not—DMMs as a practical matter would need to integrate such information into their automated trading models to use it. Exchange systems, however, would specifically prevent such use.

To the extent that the Commission is concerned that a DMM could otherwise use the proposed incremental information for trading purposes, it is useful to consider the premise apparently underlying the concern. The premise is presumably that learning the component sizes of trading interest that is already visible in the aggregate, or that learning the identity of the entering firm, clearing firm, or the Floor broker for a component order, could somehow add sufficiently to the DMMs view of the market to induce the DMM to trade on the same side or opposite side of a component order. The Exchange is aware of no facts, data or analyisis that would support such a premise. Additionally, firms already advertise many of these particulars of their trading interest on both a pre- and post-trade basis (IOIs and other forms) through a variety of electronic vendor solutions, such as Bloomberg [50] and Autex.[51] Therefore, the ability and willingness of firms to advertise their interest is hardly a new concept in today's marketplace. The proposal would simply restore within the Exchange environment features and services previously available on the Floor and currently offered beyond the Floor by multiple market data vendors.

Moreover, the balance of benefits and potential costs would favor unambiguously a choice on the part of a member or customer to make disaggregated order information visible to the DMM and available to Floor brokers. As illustrated in detail by Scenarios 1 and 2 above, the potential benefits to a customer of sharing disaggregated order information (again, by choosing not to enter the order dark) would be both significant and concrete. A member's sharing of a customer's order information, for example, would make it possible for contra side interest to initiate contact with the member and for the customer to experience a size transaction that avoids market impact and reduces transaction costs. In contrast, the potential cost of sharing the information would be de minimis because the component order information would add nothing meaningful to the information reflected in the aggregate trading interest already visible to DMM and to the market via OpenBook. More fundamentally, members today can choose from an array of alternatives to the Exchange's integration of human judgment into the price discovery process at a single, physical point of sale. That choice represents the ultimate check on any imbalance in the allocation of benefits to DMMs or Floor brokers.

It is also worth noting that the utility of disaggregated order to the Floor is largely independent from its freshness or staleness as trading information. Information that is stale in trading terms, for example, may nonetheless be enormously helpful to an agent like a Floor broker in the search for a size counterparty. Assume, for instance, that there is no live interest expressed in the Display Book at or near a particular price point. It may nonetheless be useful for a Floor broker to know that a particular firm had entered an order in the security at a particular level a day or two before. Knowing the identity of the entering firm could allow a Floor broker to identify a counterparty in much the same way as Scenario 1 above, producing the same size interaction and reduced transaction costs for both sides of the trade. Notably, this utility is also distinct from how actively traded a particular security is.

Moreover, Section 11(a) obligations on Floor brokers ensure that investors, not Floor brokers, will reap the benefits of access to the disaggregated order information, providing that Floor brokers will not ''effect any transaction on [the] exchange for its own account * * *.'' [52] This trading restriction has been in place since 1978, when Floor brokers regularly had access to disaggregated order information on the Floor. The Exchange amended Rule 115 regarding what information could be provided in connection with a market look because, at the time, the Exchange did not have the technology to replicate the ability of Floor brokers to maintain certain interest as ''dark.'' Although the Exchange reduced the access to information available to Floor brokers—which was always via the specialist, and now, DMM—the trading restrictions were not lessened. Now that the Exchange has enabled market participants to replicate electronically the type of dark interest formerly maintained manually by Floor brokers, the Exchange can restore the access to disaggregated order information without any need to adjust the applicable trading restrictions. These applicable trading restrictions provide assurance that the Floor brokers will not be reaping the benefits of access to disaggregated order information; the benefits will directly flow to investors.

Existing trading restrictions and the additional affirmative obligations required by the New Market Model provide appropriate controls, ensuring that the adoption of Rule 104(j) meets the requirements of Section 6(b)(5) of the Act. As previously enumerated, DMMs are subject to a number of restrictions governing access to non-public order information that remains unchanged since before the adoption of the New Market Model, and which were put in place when DMMs still had an agency role. Even though they no longer act as agents, DMMs are still subject to those trading restrictions. The rules of the Exchange are designed such that any additional access by DMMs and Floor brokers to information not available generally to off-Floor traders carries with it restrictive obligations regarding the permitted use of such information.

Floor Competition With Off-Floor Members

The Disapproval Order expresses concern about the provision of disaggregated order information to Floor Members and, by extension, exclusively to Floor broker customers and the potential ''detrimental effect on competition between on-Floor and off-Floor members of the Exchanges.'' Several points bear emphasis here. The Floor broker's ability to share information in this way aligns with the agency relationship between the Floor broker and his or her customer, and is

[50] Bloomberg allows brokers to disseminate IOIs to the buy-side via Bloomberg's Execution Management Solutions.

[51] Autex is an electronic platform from Thomson Financial that allows potential buyers and sellers to identify other large traders by showing ''trade advertisements'' in a stock. The interface presents indicators of interest among traders, permitting buy-side clients to identify optimum trading partners.

[52] 15 U.S.C. 78k(a) (2012).

complementary to other affected market participants. That is, the agent-Floor broker is enabled to make full disclosure to his or her principal-customer. The customer, given his or her own trading interest, has an interest in not disseminating the information learned from the Floor broker. The member organization and the member organization's customer benefit in that the Floor broker's customer potentially could initiate direct contact with the member organization. In this way, the Floor broker's sharing of this type of information with the customer provides a sort of check of the principal on the agent and ensures that the agent adds value. The Exchange's integration of human judgment into a point of sale occurs, in other words, within a competitive landscape filled with customer choice among both exchange and off-exchange venues. The modest increase in visibility offered by the proposed rules, especially in light of increasing dispersal of liquidity, in no way upsets that competitive balance.

In addition, extending the proposed visibility to other off-Floor participants presents obvious dangers. NYSE Rules 98 and 104(b) are not applicable to other proprietary traders, for example. Accordingly, if disaggregated information were provided electronically to all market participants, there would be no mechanism or informational barrier ensuring that the disaggregated information could only be used for the benefit of investors. Rule 104(j)'s success in protecting investors and the public interest is directly tied to its limited access.

Finally, any off-Floor member is free to utilize the services of a Floor broker, in which case, the benefits of the proposed rule change would flow entirely to the off-Floor member (or the customer entering the order). Additionally, the benefits of the proposed rule change still inure to those participants who choose not to utilize Floor brokers because Floor brokers may source liquidity from those participants. The proposed rule change is not a zero-sum game: The benefits of the proposal are spread across market participants, not limited to a select few at the expense of others.

Conforming Amendments

To reflect the information that would be available to DMMs through Exchange systems, the Exchange proposes amendments to Rules 70(e), (f) and (i) and 70.25(a)(vii) to specify which information is available to a DMM through Exchange systems. The Exchange also proposes changes to Rule 70 to specify what information about e-Quotes is available to the DMM. The Exchange notes that the proposed amendments to Rule 70 do not change the operation of the existing rule, other than to specify which interest may be available to the DMM on a disaggregated basis, as discussed above. Rather, the amendments are proposed as clarifying changes with respect to the manner that Floor broker agency interest currently operates and how such interest may be available to the DMM. For example, current Rule 70(e) states that a Floor broker has discretion to exclude all of his or her agency interest, subject to the provisions in the rule, from the aggregated agency interest information available to the DMM consistent with Exchange rules governing Reserve Orders. Because ''excluding'' interest from the information available to the DMM is similar to how Reserve Orders operate pursuant to Rule 13, the Exchange proposes to harmonize the terms and use term ''e-Quote'' to replace the term ''Floor broker agency interest,'' use the term ''Minimum Display Reserve e-Quote'' to replace the concept in current Rule 70(f)(ii), and use the term ''Non-Display Reserve e-Quotes'' to replace the concept in current Rule 70(f)(i). The Exchange also proposes to provide more specificity in amended Rule 70 of how such interest would be made available to the DMM, consistent with the current operation of the Rule.

In addition, the Exchange proposes to delete Rule 104(a)(6), which currently provides that DMMs, trading assistants and anyone acting on their behalf are prohibited from using the Display Book® system to access information about Floor broker agency interest excluded from the aggregated agency interest and Minimum Display Reserve Order information other than for the purpose of effecting transactions that are reasonably imminent where such Floor broker agency and Minimum Display Reserve Order interest information is necessary to effect such transaction.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b) of the Act,[53] in general, and Section 6(b)(5) of the Act,[54] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that the proposed change promotes just and equitable principles of trade because the proposed change is an integration of human judgment into the price discovery process at a single, physical point of sale, whose nature and extent is driven by the demands of informed consumers. With no shortage of competing execution venues and the lack of an obligation on the part of market participants to utilize the services of a Floor broker, whether and how Floor brokers are used reflect the value placed by market participants on what the Floor adds. The wholly consensual integration of human judgment will serve legitimate Floor functions in three respects: (1) It increases the possibility that buyers and sellers of size positions can meet, thereby enhancing their opportunities to reduce transaction costs; (2) it expedites the discovery and resolution of errors, thereby reducing disruptive impacts and promoting fair and orderly markets; and (3) it leverages the informed choices of users, allowing the interplay of competitive forces to determine the scope and nature of human interaction in the price discovery process.

Similarly, the Exchange believes that the proposed change will protect investors and the public interest because existing trading restrictions and additional affirmative obligations required by the New Market Model provide appropriate controls. As previously stated, DMMs are subject to a number of restrictions governing access to non-public order information. Additionally, the rules of the Exchange are designed such that any additional access by DMMs and Floor brokers to information not available generally to off-Floor traders carries with it restrictive obligations regarding the permitted use of such information.

Additionally, the Exchange believes that the proposed change will remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because the proposed change clarifies that DMMs may perform certain defined Trading Floor functions, which were previously performed by specialists, in furtherance of the efficient, fair, and orderly operation of the Exchange. Increasing the amount of information, including disaggregated order information, that a DMM is permitted to view and provide to Floor brokers would further the ability of DMMs to carry out the defined Trading Floor functions and, as a result is designed to remove impediments to and perfect the mechanism of a free and open market through the efficient operation of the

[53] 15 U.S.C. 78f(b).

[54] 15 U.S.C. 78f(b)(5).

Exchange, in particular by facilitating the bringing of buyers and sellers together.

The Exchange also believes that the proposed change is equitable and not unfairly discriminatory because extending the proposed visibility to other off-Floor participants presents obvious dangers: NYSE Rules 98 and 104(b) are not applicable to other proprietary traders, and if disaggregated information were provided electronically to all participants, there would be no mechanism or informational barrier ensuring that the disaggregated information could only be used for the benefit of investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change will facilitate the execution of block trades, and as a result, will reduce the market impact and associated transactions costs for members wishing to take advantage of the rule proposal. The reduction of transaction costs, along with the proposal's other purpose of expediting error resolution, will improve the efficiency of the market and remove barriers to order execution, thus increasing the level of participation and competition in the marketplace.

The Exchange operates in a highly competitive market in which market participants can easily and readily direct order flow to competing venues. The Exchange's integration of human judgment into a point of sale occurs within that competitive landscape filled with customer choice among both exchange and off-exchange venues. The modest increase in visibility offered by the proposed rules, especially in light of increasing dispersal of liquidity, in no way upsets that competitive balance.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2013–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2013–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2013–21 and should be submitted on or before May 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[55]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10015 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69362A; File No. 600–23]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Amended Application for Registration as a Clearing Agency; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Notice; correction.

SUMMARY: The Securities and Exchange Commission published a document in the **Federal Register** of April 17, 2013 concerning a Notice of Filing of Amended Application for Registration as a Clearing Agency. The document contained an incorrect citation regarding the Director of the Division of Trading and Markets' delegated authority to publish notice of such an application.

FOR FURTHER INFORMATION CONTACT: Neil Lombardo, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549, (202) 551–4649.

Correction

In the **Federal Register** of April 17, 2013, in FR Doc. 2013–08924, on page 22925, in footnote twenty-three, which appears in the second column, correct the footnote to read: ''17 CFR 200.30–3(a)(16).''

Dated: April 24, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–10032 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

[55] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69423; File No. SR–ICEEU–2013–05]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Withdrawal of Proposed Rule Change Regarding Central Counterparty Resolution and Recovery Procedures

April 22, 2013.

On March 7, 2013, ICE Clear Europe Limited (''ICE Clear Europe'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt new provisions relating to clearinghouse resolution and recovery following the exhaustion of available resources after a Clearing Member default or a series of Clearing Member defaults. Notice of the proposed rule change was published in the **Federal Register** on March 28, 2013.[3] The Commission did not receive comments on the proposed rule change.

On April 19, 2013, ICE Clear Europe withdrew the proposed rule change (SR–ICEEU–2013–05).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10017 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69434; File No. SR–FICC–2013–03]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Amend Mortgage-Backed Securities Division Rules Relating to Allocation of an Indemnity Claim Made in Connection With the Use of the Federal Reserve's National Settlement Service

April 23, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to correct Rule 11, Section 5(o), of FICC's Mortgage-Backed Securities Division (''MBSD'') Clearing Rules in order to accurately reflect the manner in which FICC should allocate an indemnity claim made in connection with the use of the Board of Governors of the Federal Reserve System's (''FRB'') [3] National Settlement Service (''NSS'').[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

FICC's Government Securities Division (''GSD'') and MBSD each use the FRB's NSS for Funds-Only Settlement [6] and Cash Settlement [7] purposes, respectively. GSD's Rule 13 and MBSD's Rule 11 address the situation where the FRB makes an indemnity claim in connection with the use of the NSS service by FICC. Pursuant to the GSD and MBSD rules, if FICC receives an FRB indemnity claim, FICC will apportion the entire liability to the GSD netting members or MBSD clearing members, as applicable, for whom the settling bank was acting at the time.[8] If such amounts are not sufficient to fully satisfy the FRB indemnity claim, each of the GSD and MBSD rules currently provide different directives as to how FICC should handle the remaining loss. The GSD rules state that FICC will treat the remaining loss as an ''Other Loss,'' as defined in GSD Rule 4, and allocate accordingly.[9] In contrast, MBSD Rule 11, Section 5(o), states that FICC will allocate the remaining loss among all MBSD clearing members in proportion to their relative use of the MBSD services (based on fees).

The purpose of the proposed rule change is to correct MBSD's Rule 11 in order to accurately reflect the correct manner in which FICC should allocate an indemnity claim made in connection with the use of the FRB's NSS. The MBSD provision in Rule 11 was drafted prior to the MBSD becoming a central counterparty and adopting a loss mutualization process similar to the GSD process. When FICC filed its rule change to provide guaranteed settlement and central counterparty services,[10] which among other things established the loss mutualization process, the MBSD NSS indemnity provision requiring the current loss allocation process was inadvertently overlooked and therefore not updated during FICC's efforts to harmonize the GSD and MBSD rules. Accordingly, the rule change proposes to correct this oversight by revising MBSD Rule 11, Section 5(o), to reflect that all remaining losses from a FRB indemnity claim should be treated as an ''Other Loss'' as defined in MBSD Rule 4 and allocated accordingly.

FICC believes the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder because it would facilitate the prompt and accurate clearance and settlement of securities transactions by correcting MBSD's rules to accurately reflect the loss allocation procedures in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 69209 (Mar. 22, 2013), 78 FR 19057 (Mar. 28, 2013).

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The acronym ''FRB'' is a defined in MBSD's Clearing Rule 1 (Definitions) as the Board of Governors of the Federal Reserve System and each Federal Reserve Bank, as appropriate.

[4] The text of the proposed rule change is provided as Exhibit 5 to this filing and is available at *www.dtcc.com/downloads/legal/rule_filings/2013/ficc/SR_FICC_2013_03.pdf.*

[5] The Commission has modified the text of the summaries prepared by FICC.

[6] ''Fund-Only Settlement Amount'' is defined under Rule 1 of GSD's Rulebook as the net dollar amount of a netting member's obligation, calculated pursuant to GSD's Rule 13, either to make a funds-only payment to GSD or to receive a funds-only payment from GSD. See GSD Rule 13 for the rules related to funds-only settlement.

[7] ''Cash Settlement'' is defined under Rule 1 of MBSD's Clearing Rules as the payment each business day by MBSD to a member or by a member to MBSD. See MBSD Rule 11 for the rules related to cash settlement.

[8] See GSD's Rule 13 Section 5(o) and MBSD Rule 11, Section 5(o).

[9] Rule 4(f) of GSD's Rulebook.

[10] Exchange Act Release No. 66550 (March 9, 2012), 77 FR 15155 (March 14, 2012) [File No. SR–FICC–2008–01] (order approving amended proposed rule change to allow MBSD to provide guaranteed settlement and central counterparty services).

connection with NSS and to ensure that there is consistent treatments of such losses between the MBSD and GSD rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule changes have not been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file Number SR–FICC–2013–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FICC–2013–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2013/ficc/SR_FICC_2013_03.pdf.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2013–03 and should be submitted on or before May 20, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10026 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69429; File No. SR–BOX–2013–21]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7170 To Clarify That the Exchange May Grant Obvious Error Relief in the Event of Unusual Circumstances

April 23, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 18, 2013, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7170 (Obvious and Catastrophic Errors) to clarify that the Exchange may grant Obvious Error relief in the event of unusual circumstances, even if the Market Operations Center (''MOC'') of BOX Market LLC (''BOX'') was not notified within the time periods prescribed in the rule. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7170 (Obvious and Catastrophic Errors) to clarify that the Exchange has the ability to grant Obvious Error relief in the event of unusual circumstances, even if the MOC was not notified within the time periods prescribed in the rule. This is a competitive filing that is based on the Obvious Error rules of the NASDAQ Stock Market LLC (''NOM''), NASDAQ OMX PHLX LLC (''PHLX''), Chicago Board Options Exchange (''CBOE''), C2 Options Exchange (''C2''), International Securities Exchange (''ISE''), NYSE Arca Options (''Arca''), NYSE MKT, LLC (''MKT''), BATS Exchange, Inc. (''BATS''), Miami International Securities Exchange LLC

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(''MIAX''), and NASDAQ OMX BX (''BX'').[3]

The Obvious Error Rule was developed as part of an industry wide effort to address the need to handle errors in a fully electronic market where orders are executed automatically before an obvious error may be discovered and corrected by participants. The Obvious Error Rule assures that one participant is not permitted to receive a wind-fall at the expense of another participant that made an obvious error. Rule 7170 provides the framework and procedures for determining whether a transaction was the result of an ''obvious error'' pursuant to objective standards. When a market marker (including a BOX Market Maker and any transactions sent by a market maker on another exchange where the order is designated with a market maker account type on BOX) believes that it participated in a transaction that was the result of an Obvious Error, it must notify the MOC within five (5) minutes of the execution. If a non-Market Maker Options Participant believes an order it executed on BOX was the result of an Obvious Error, it must notify the MOC within twenty (20) minutes of the execution. Currently, Rule 7170(g) states that except as provided below, the Exchange will not grant relief under this Rule unless notification is made within the prescribed time periods.[4] This exception references Rule 7170(i) which states that a party may request that the CRO provide obvious error relief in cases where the party failed to provide the notification required, but unusual circumstances merit special consideration.

The purpose of this rule change is to amend Rule 7170(g)(1) to make it clear that the Exchange does have the flexibility to determine if an Obvious Error has occurred even if notification was given outside of the prescribed time periods. Specifically, the Exchange proposes to amend its Obvious Error Procedure in Rule 7170(g) to state that the Exchange may grant relief when notification was not made within the prescribed time periods but the transaction occurred under unusual circumstances. While this exception is rarely used, it gives the CRO the flexibility to look at all the circumstances surrounding the Participant's request so that Participants are not adversely affected by unforeseen issues that prevented them from notifying the Exchange about an erroneous transaction within the allotted time period. For example, this rule might allow relief when a broker-dealer believes an order was the result of an Obvious Error, but cannot immediately reach the customer it represents and is delayed in notifying the Exchange. Another possible ''unusual circumstance'' could occur if obvious error transactions occurred simultaneously on multiple exchanges and the Participant had to separately notify each of these exchanges, and therefore was delayed in notifying BOX. This exception could also apply when the notification is only slightly outside of the prescribed time periods due to a timing conflict.

The Exchange believes that the proposed rule change is reasonable and objective and would serve to enhance the application of the Exchange's Obvious Error Rule by making Participants aware that the Exchange may grant Obvious Error relief even when they do not notify the Exchange in time, if unusual circumstances are present. The Exchange believes that the proposed rule change would strengthen its Obvious Error Rule because if would ensure that all Options Participants are informed about notification exception. This proposed rule change would align the Exchange's Obvious Error Procedure rule with the Obvious Error Procedure rules currently in place at the other exchanges.[5]

Additionally, the Exchange proposes to make three non-substantive cross-reference corrections to its Obvious Error Rule. Specifically Rule 7170(e) (Erroneous Print in Underlying), Rule 7170(g)(2) (Adjust or Bust), and Rule 7170(i) (Request for Review) are being amended to update an incorrect rule cross-reference.

This proposal does not seek to substantively change any portion of the Exchange's Obvious and Catastrophic Error Rule and is only intended to clarify that the Exchange has flexibility when deciding if the Options Participant met the notification requirements under the rule. If an Options Participant notifies the Exchange about an erroneous transaction outside the prescribed time period and the Exchange decides that unusual circumstances are present, the Exchange will then use the already existing objective criteria outlined in its Obvious and Catastrophic Error Rule to determine if relief should be granted.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

In particular, the Exchange believes that the proposed rule change would benefit investors and market participants by aligning the Exchange's rule with respect to Obvious Errors with those of other exchanges. By creating uniformity with the other exchanges, the Exchange believes the proposed rule change will help foster greater certainty for market participants trading on multiple exchanges. Accordingly, the Exchange believes that the proposed rule change, combined with the continued objective nature of the Exchange's process for rendering and reviewing trade nullification determinations, is consistent with prior guidance from the Commission, is consistent with the Exchange Act and is consistent with the maintenance of a fair and orderly market and the protection of investors and the public interest.

Further, the Exchange believes it is appropriate to make these non-substantive cross-reference corrections to its Obvious Error Rule so that Exchange members and investors have a clear and accurate understanding of the meaning of the Exchange's rules. By making these cross-reference corrections, the Exchange is eliminating any potential for confusion about how the Obvious Error Rule operates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to the Obvious Error rules currently in place at the NOM, PHLX, CBOE, C2,

[3] *See* NOM Chapter V, Section 6(d), PHLX Rule 1092(e)(i)(A), CBOE Rule 6.25(b)(1), C2 Rule 6.15(b)(1), ISE Rule 720(b)(1), NYSE Arca Rule 6.87(b)(1), NYSE MKT Rule 975NY(b)(1), BATS Rule 20.6(d), MIAX Rule 521(e)(1) and BX Chapter V, Section 6(d).

[4] *See* BOX Rule 7170(g)(1).

[5] *See supra,* note 3.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

ISE, Arca, MKT, BATS, MIAX and BX.[8] The Exchange believes this proposed rule change is designed to permit fair competition among the options exchanges and to establish uniform rules regarding the treatment of erroneous transactions. Specifically, this proposal will promote investor certainty by clarifying that the Exchange has the ability to grant relief, even when [sic] has not been notified within the time periods prescribed in the rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6)[10] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2013–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2013–21. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2013–21 and should be submitted on or before May 20, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–10018 Filed 4–26–13; 8:45 am]

BILLING CODE 8011–01–P

[8] *See supra,* note 3.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Enercorp, Inc., FTS Group, Inc., Games, Inc. (n/k/a InQBate Corporation), Hartmarx Corporation (n/k/a XMH Corp. 1), and Penn Treaty American Corporation; Order of Suspension of Trading

April 25, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Enercorp, Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FTS Group, Inc. because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Games, Inc. (n/k/a InQBate Corporation) because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Hartmarx Corporation (n/k/a XMH Corp. 1) because it has not filed any periodic reports since the period ended August 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Penn Treaty American Corporation because it has not filed any periodic reports since the period ended December 31, 2006.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on April 25, 2013, through 11:59 p.m. EDT on May 8, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–10105 Filed 4–25–13; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: National Flight Data Center Web Portal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 15, 2013, vol. 78, no. 32, pages 11264–11265. NFDC Web Portal forms are used to collect aeronautical information, detailing the physical description and operational status of all components of the National Airspace System (NAS). This submission includes the additional public burden for the Special Flight Area processing tool.

DATES: Written comments should be submitted by May 29, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0754.

Title: National Flight Data Center Web Portal.

Form Numbers: FAA Forms 7900–5, 7900–6, 7900–XX.

Type of Review: Renewal of an information collection.

Background: The National Flight Data Center (NFDC) is the authoritative government source for collecting, validating, storing, maintaining, and disseminating aeronautical data concerning the United States and its territories to support real-time aviation activities. The data ensures the safe and efficient navigation of the national airspace. The data is maintained in the National Airspace System Resources (NASR) database which serves as the official repository for NAS data and is provided to government, military, and private producers of aeronautical charts, publications, and flight management systems.

Respondents: 7,318 representatives of U.S. public airports, U.S. privately-owned instrument landing systems, and non-Federal weather systems.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 25 minutes per response

Estimated Total Annual Burden: 1,296 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 23, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–10037 Filed 4–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Aircraft Registration Renewal

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 15, 2013, vol. 78, no. 32, page 11265. The information collected on an Aircraft Re-Registration Application, AC Form 8050–1A and an Aircraft Registration Renewal Application, AC Form 8050–1B, will be used by the FAA to verify and update aircraft registration information collected for an aircraft when it was first registered.

DATES: Written comments should be submitted by May 29, 2013.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0729.

Title: Aircraft Re-Registration and Registration Renewal.

Form Numbers: AC Forms 8050–1A and 8050–1B.

Type of Review: Renewal of an information collection.

Background: The information collected on an Aircraft Re-Registration Application (AC Form 8050–1A) and Aircraft Registration Renewal Application (AC Form 8050–1B) will be used by the FAA to verify and update the aircraft registration information collected for an aircraft when it was first registered. The updated registration database will then be used by the FAA to monitor and control U.S. airspace and to distribute safety notices and airworthiness directives to aircraft owners.

Respondents: Approximately 121,660 aircraft owners.

Frequency: Information is collected triennially.

Estimated Average Burden per Response: 30 minutes.

Estimated Total Annual Burden: 60,830 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's

performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 23, 2013.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2013–10036 Filed 4–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Termination of the Preparation of an Air Tour Management Plan and Environmental Assessment for Petrified Forest National Park, Arizona

AGENCY: Federal Aviation Administration.

ACTION: Notice of Termination of the Preparation of Air Tour Management Plan and Environmental Assessment.

SUMMARY: The Federal Aviation Administration (FAA), in cooperation with the National Park Service (NPS), announces that it will no longer prepare an Air Tour Management Plan (ATMP) and Environmental Assessment (EA) for commercial air tour operations over Petrified Forest National Park in Arizona. The FAA and NPS have stopped work on preparation of the ATMP and EA based upon a provision included in the FAA Modernization and Reform Act of 2012 (Pub. L. 112–141) that exempted parks with 50 or fewer annual commercial air tour operations from the provisions of the National Parks Air Tour Management Act of 2000 (NPATMA) (Pub. L. 106–181).

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Program Manager, AWP–1SP, Federal Aviation Administration, Western-Pacific Region, P.O. Box 92007, Los Angeles, California 90009–2007. Telephone: (310) 725–3808.

SUPPLEMENTARY INFORMATION: In a July 1, 2010 **Federal Register** notice (75 FR 38169), the FAA in cooperation with the National Park Service (NPS) provided notice of their intent to develop an EA for the ATMP at Petrified Forest National Park, pursuant to the National Parks Air Tour Management Act of 2000 (Pub. L. 106–181) and its implementing regulations contained in 14 CFR Part 136, Subpart B, National Parks Air Tour Management. The ATMP process for Petrified Forest National Park was initiated based on receipt of applications for operating authority from two existing commercial air tour operators to conduct commercial air tour operations over this park unit. In accordance with NPATMA and based on the existing level of operations at the time of the application, the FAA issued interim operating authority (IOA) to the two existing commercial air tour operators to conduct an annual total of 46 commercial air tours over the park until such time as an ATMP was developed. The FAA and NPS began preparing an EA to comply with the National Environmental Policy Act (Pub. L. 91–190), which requires Federal agencies to consider the environmental impacts associated with a major federal action.

The FAA Modernization and Reform Act of 2012 (Pub. L. 112–95) amended various provisions of NPATMA. One provision exempted national park units with 50 or fewer annual commercial air tour operations from the requirements of NPATMA. The provision also allows the Director to withdraw the exemption if the Director determines that an air tour management plan or voluntary agreement is necessary to protect park resources and values or park visitor use and enjoyment. The provision requires FAA and NPS to jointly publish a list each year of national parks covered by the exemption. In addition, commercial air tour operators conducting commercial air tour operations over a national park that is exempt from the requirements of NPATMA, shall submit to the FAA and NPS a report each year that includes the number of commercial air tour operations the operator conducted during the preceding 1-year period over the park.

Since there are fewer than 50 annual commercial air tour operations being conducted over Petrified Forest National Park and NPS is not withdrawing the exemption, the park is exempt from NPATMA. Therefore, the FAA, in cooperation with the NPS, has stopped work and discontinued the preparation of the ATMP and EA for Petrified Forest National Park.

The list of units of the National Park System exempt from the provisions of NPATMA, which includes Petrified Forest National Park, was published in the **Federal Register** on December 19, 2012 (77 FR 75254).

Issued in Hawthorne, California on April 17, 2013.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2013–09973 Filed 4–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixteenth Meeting: RTCA Special Committee 217—Aeronautical Databases Joint With EUROCAE WG–44—Aeronautical Databases

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of RTCA Special Committee 217—Aeronautical Databases Joint with EUROCAE WG–44—Aeronautical Databases.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 217—Aeronautical Databases being held jointly with EUROCAE WG–44—Aeronautical Databases.

DATES: The meeting will be held June 17 through June 21, 2013, from 9:00 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at Hilton Garden Inn, O'Fallon, Illinois, USA (Metro East St Louis).

FOR FURTHER INFORMATION CONTACT: Sophie Bousquet, *SBousquet@rtca.org*, 202–330–0663 or The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of RTCA Special Committee 217—Aeronautical Databases held jointly with EUROCAE WG–44—Aeronautical Databases. The agenda will include the following:

Monday, June 17—Opening Plenary Session

- Co-Chairmen's remarks and introductions
- Housekeeping
- Approve minutes from 15th meeting
- Review and approve meeting agenda for 16th meeting
- Schedule and working arrangements for this week
- Review of joint WG–1/WG–2 Action Items
- Update on WorkSpace
- Closing Plenary Schedule

Monday thru Thursday, June 17 to 21—Working Group Sessions

Working Group One (WG1)—DO–200A/ED–76—Stephane Dubet

Working Group Two (WG2)—DO–272/DO–276/DO–291—John Kasten

Friday, June 21—Closing Plenary Session

- Presentation of WG1 and WG2 conclusions
- Working arrangements for the remaining work
- Review of action items
- Next meetings, dates and locations
- Any other business
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 23, 2013.

Paige L. Williams,

Management Analyst, Business Operations Group, ANG–A12, Federal Aviation Administration.

[FR Doc. 2013–10038 Filed 4–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 23, 2013.

The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before May 29, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0951.

Type of Review: Revision of a currently approved collection.

Title: Regulations Governing the Performance of Actuarial Services under the Employee Retirement Income Security Act of 1974 (20 CFR 901).

Form: 5434, 5434–A.

Abstract: The information relates to the granting of enrollment status to actuaries admitted (licensed) by the Joint Board for the Enrollment of Actuaries to perform actuarial services under the Employee Retirement Income Security Act of 1974.

Affected Public: Private Sector: Businesses or other for-profits, Not-for-profit institutions.

Estimated Annual Burden Hours: 4,200.

OMB Number: 1545–1573.

Type of Review: Extension without change of a currently approved collection.

Title: REG–130477–00; REG–130481–00 (TD 8987—Final), Required Distributions from Retirement Plans.

Abstract: The regulation permits a taxpayer to name a trust as the beneficiary of the employee's benefit under a retirement plan and use the life expectancies of the beneficiaries of the trust to determine the required minimum distribution, if certain conditions are satisfied.

Affected Public: Individuals or Households.

Estimated Annual Burden Hours: 333.

OMB Number: 1545–1694.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Ruling 2000–35, Automatic Enrollment in Section 403(b) Plans.

Abstract: Revenue Ruling 2000–35 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employer's section 403(b) plan in the absence of an affirmative election by the employee.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 175.

OMB Number: 1545–1701.

Type of Review: Extension without change of a currently approved collection.

Title: Revenue Procedure 2000–37, Reverse Like-kind Exchanges (as modified by Rev Proc. 2004–51).

Abstract: The revenue procedure provides a safe harbor for reverse like-kind exchanges under which a transaction using a ''qualified exchange accommodation arrangement'' will qualify for non-recognition treatment under Sec. 1031 of the Internal Revenue Code.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 3,200.

OMB Number: 1545–2023.

Type of Review: Extension without change of a currently approved collection.

Title: Modernized e-File—Non-compliance with Mandate for Large Corporations to File Electronically.

Abstract: The Service will contact those taxpayers who file paper income tax returns to determine if these taxpayers should have filed electronic returns under the Mandate, Treasury Regulation Section 301.6011–5T.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 2,080.

OMB Number: 1545–2026.

Type of Review: Extension without change of a currently approved collection.

Title: Tribal Evaluation of Filing and Accuracy Compliance (TEFAC)—Compliance Check Report.

Abstract: This form will be provided to tribes who elect to perform a self-compliance check on any or all of their entities. This is a voluntary program and the entry is not penalized for non-completion of forms and withdrawal from the program. Upon completion, the information will be used by the Tribe and ITG to develop training needs, compliance strategies, and corrective actions.

Affected Public: State, Local, and Tribal Governments.

Estimated Annual Burden Hours: 447.

OMB Number: 1545–2236.

Type of Review: Extension without change of a currently approved collection.

Title: Verification of Reported Income.

Form: 14420.

Abstract: In 2009, legislation was passed requiring payment card processors to file Forms 1099–K reporting payment card transactions for businesses who accept this form of payment. The IRS is launching pilots aimed at determining the best method for and the value of using the 1099–K

information to identify and treat non-compliant taxpayers. Notices are sent to taxpayers who have been identified as potential under-reporters. The notices inform them that their return has been selected for further inquiry since the portion of their reported gross receipts attributable to 1099–K card payments appear atypically large, which may suggest potential underreporting of non-card payments (e.g. cash). Taxpayers are requested to fill out this form to correct for 1099–K data errors and provide additional information that may explain their outlier figures.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 22,400.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2013–09976 Filed 4–26–13; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 78 Monday,
No. 82 April 29, 2013

Part II

Federal Communications Commission

47 CFR Parts 0, 1, 2, et al.
Radio Experimentation and Market Trials—Streamlining Rules; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 5, 22, 73, 74, 80, 87, 90 and 101

[ET Docket No. 10–236 and 06–155; FCC 13–15]

Radio Experimentation and Market Trials—Streamlining Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises and streamlines the Commission rules to modernize the Experimental Radio Service (ERS). The rules adopted in the Report and Order updates the ERS to a more flexible framework to keep pace with the speed of modern technological change while continuing to provide an environment where creativity can thrive. To accomplish this transition, the Commission created three new types of ERS licenses—the program license, the medical testing license, and the compliance testing license—to benefit the development of new technologies, expedite their introduction to the marketplace, and unleash the full power of innovators to keep the United States at the forefront of the communications industry. The Commission's actions also modify the market trial rules to eliminate confusion and more clearly articulate its policies with respect to marketing products prior to equipment certification. The Commission believes that these actions will remove regulatory barriers to experimentation, thereby permitting institutions to move from concept to experimentation to finished product more rapidly and to more quickly implement creative problem-solving methodologies.

DATES: Effective May 29, 2013, except §§ 2.803(c)(2), 5.59, 5.61, 5.63, 5.64, 5.65, 5.73, 5.79, 5.81, 5.107, 5.115, 5.121, 5.123, 5.205, 5.207, 5.217(b), 5.307, 5.308, 5.309, 5.311, 5.404, 5.405, 5.406, 5.504, and 5.602. These rules contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), *and will become effective* after the Commission publishes a document in the **Federal Register** announcing the approval and effective date.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, 202–418–2452, *Rodney.Small@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, ET Docket No. 10–236 and 06–155, FCC 13–15, adopted January 31, 2013, and released January 31, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Report and Order

1. In November 2010, the Commission adopted a *Notice of Proposed Rulemaking* (*NPRM*) in this proceeding to implement Recommendations 5.14 and 7.7 of the *National Broadband Plan.* In that *NPRM,* the Commission also sought comment on several proposed changes to the Experimental Radio Service rules to provide additional flexibility to innovators, so that they can more quickly transform their ideas to fully functional new products and services that meet consumer needs. Specifically, the Commission proposed to create a new program experimental license to provide greater flexibility than the conventional experimental license to allow experimenters to alter the course of their tests, if needed, without having to request specific permission from the Commission. It targeted this proposal at specific sectors of the communications ecosystem, including universities and non-profit research organizations and medical institutions. It also proposed to eliminate the almost unused developmental license, consolidate all experimental rules including broadcast experimental rules in parts 73 and 74 into part 5, clarify the market trial rules, and make targeted rule changes aimed at providing additional flexibility and clarity of its rules.

2. In the Report and Order (R&O) the Commission revises and streamlines its rules to modernize the ERS. The rules adopted in the R&O update the ERS to a more flexible framework to keep pace with the speed of modern technological change while continuing to provide an environment where creativity can thrive. To accomplish this transition, the Commission creates three new types of ERS licenses—the program license, the medical testing license, and the compliance testing license—to benefit the development of new technologies, expedite their introduction to the marketplace, and unleash the full power of innovators to keep the United States at the forefront of the communications industry. The Commission's actions also modify the market trial rules to eliminate confusion and more clearly articulate its policies with respect to marketing products prior to equipment certification. The Commission believes that these actions will remove regulatory barriers to experimentation, thereby permitting institutions to move from concept to experimentation to finished product more rapidly and to more quickly implement creative problem-solving methodologies.

3. The Report and Order takes the following actions:

- Consolidates rules for broadcasting experiments into a new subpart within part 5 and eliminates developmental licensing rules in several Commission rules parts so that all experimental authority will be under the part 5 ERS Rules, providing clear and consistent guidelines to applicants for all types of experimentation.
- Establishes program experimental licenses for colleges and universities with an accredited graduate research program in engineering, research laboratories, manufacturers of radio frequency (RF) equipment, manufacturers that integrate radio frequency equipment into their end products and health care institutions to allow broad experimental authority under a single license.
- Creates a Commission Web site where program licensees will register individual experiments to be conducted under a program license at least ten days prior to commencing the experiment.
- Requires that each program licensee post on the Commission Web site a report for each individual experiment completed, including a description of its results.
- Establishes a compliance testing license, which will be available to Commission-recognized testing laboratories that test radio frequency devices for certification purposes.
- Establishes a medical testing license to permit health care facilities to undertake clinical trials of cutting-edge wireless medical technologies.
- Establishes a process whereby the Commission can specify innovation zones where program licensees may operate in addition to their authorized area of operations.

• Broadens opportunities for market trials by adopting a new subpart within the ERS rules that contains provisions for product developmental trials, as well as market trials, and modifies the rules to clarify when operation or marketing of radio frequency devices is permitted prior to equipment certification, including the number of devices that can be imported for such purposes.

• Makes other targeted changes to the Commission's experimental rules and procedures.

A. Streamlining the Commission's Rules for Experimentation

4. In the *NPRM,* the Commission noted that one goal of this proceeding was to examine the experimental rules, as well as associated developmental rules in various services, to reduce duplicative and confusing requirements. To that end, the Commission observed that licenses suitable for performing experimentation and development of new innovative products and services are scattered among various rule sections. Most notably, the Commission observed that it offers options for obtaining either an experimental license or a developmental license for entities that are developing new technology or promoting advances in existing technology. It further observed that the developmental licensing rules appear to be largely duplicative of the ERS rules, and that the vast majority of applicants apply for experimental licenses under part 5, rather than for developmental licenses under other rule parts. In addition, the *NPRM* noted that experimental licenses are available not only under part 5, but also under parts 73 and 74, in cases in which the experiment involves broadcast technology. The Commission observed that many of the rules covering broadcast and non-broadcast experimental licenses, as well as developmental licenses, are duplicative and often lead to confusion among would-be innovators. It envisioned a single ''one stop shop'' in part 5 of its rules to make its experimental processes easier to understand, allow it to eliminate duplicative provisions, and ultimately encourage greater experimentation.

5. To achieve these goals, the Commission proposed to eliminate the developmental rules and evaluate all future applications seeking any form of experimental or developmental authority under a consolidated part 5, with the relevant portions of the existing experimental broadcasting rules that are now in parts 73 and 74 moved to part 5. In short, the Commission proposed a new framework wherein all experimental applications would be evaluated under either broadcast experimental rules or non-broadcast experimental rules. It stated its belief that eliminating developmental licenses in favor of experimental licenses would have little or no impact, as experimental rules are either similar or less burdensome. It also observed that there are very few currently active developmental licenses. The Commission concluded that its proposals would provide clear and consistent guidelines to all parties seeking to experiment and innovate, leading to increased opportunities for experimentation.

6. In addition to the broad proposals, the Commission made proposals regarding three specific developmental licensing issues. First, because broadcast experiments pursuant to parts 73 and 74 of its rules rely heavily on broadcasting-specific engineering and licensing knowledge, and are typically designed to support the operations of existing broadcasters, it did not propose to alter these processes, the ways these applications are filed or evaluated by the Commission's Media Bureau, or otherwise disturb existing practice. Instead, the Commission simply proposed to create a new subpart within part 5 into which it would move the relevant portions of the existing rules that are now in parts 73 and 74. It noted that this consolidation would remove duplicative or unneeded language and provide clearer guidance than is available today regarding when an applicant should file for a broadcast experimental license—as opposed to a more general ERS license—while retaining the necessary distinctions for broadcast-specific experimentation. Further, the Commission noted that, in consolidating the parts 73 and 74 rules into part 5, it did not intend to propose any change to the Section 106 historic preservation review applicable to broadcast experimental radio stations authorized by the Commission. Additionally, the Commission proposed to cancel all existing developmental licenses and reissue them as experimental licenses under the part 5 rules. Finally, the Commission noted that the rules for private radio meteor burst communications in § 90.250 require that new authorizations be issued subject to the developmental grant procedure, and that an application for issuance of a permanent authorization must be filed prior to the expiration of the developmental authorization. Therefore, it proposed to retain the existing rule, simply substituting the developmental license requirement with a requirement to instead obtain an experimental license to satisfy the existing ''pre-license'' requirement.

7. *Decision.* The Commission's proposal to consolidate all of its experimental and developmental rules into part 5 received widespread support, and the Commission finds that adopting that proposal will promote greater experimentation and efficiency, thus providing a significant benefit at little or no cost to the public. The current rule structure involves experimental and developmental operations scattered across ten rule parts with varying policies and eligibility requirements. To remove the confusion among license applicants caused by the varying rules, the Commission consolidates its developmental rules from various rule parts and its experimental rules from parts 5, 73, and 74 into a consolidated part 5. The Commission is retaining all necessary distinctions for broadcast-specific experimentation in the revised rules.

8. The Commission also adopts the *NPRM*'s proposal to convert the few existing developmental licenses to experimental licenses. It will cancel developmental licenses and reissue them as part 5 experimental licenses with the same technical parameters that they currently enjoy. In addition, these licenses will be freed from the specific developmental rules to which they must now adhere, and instead will follow the ERS Rules. Further, because the Commission did not receive any comments opposing the proposal for handling meteor burst communication systems under § 90.250 and it is in the public interest to do so, it adopts the *NPRM*'s proposal to require applicants for these systems to first obtain and operate under an experimental license prior to applying for a permanent meteor burst communication system under part 90 licensing requirements.

9. Regarding CTIA's recommendation that the Commission provides streamlined processing for transfers of control and assignment applications involving experimental licenses, the Commission observes that these transactions already generally occur on an expeditious basis and it sees no reason to alter its existing processes. In cases where there may be a long lag time between application filing and grant of a transfer of control, the Commission notes that many of these experimental transactions are components in a much larger transaction such as a merger involving licenses from many Commission licensing systems. In these cases, the experimental license transfer of control cannot be granted until the

Commission issues a decision on the larger transaction. Once that occurs, the experimental license transfer of control generally occurs very quickly, often within one day. The Commission will continue to handle these types of transactions on a case-by-case basis.

10. Similarly, regarding Lockheed Martin's recommendation that the Commission removes experimental licensing requirements in areas where there is negligible risk of harmful interference and omit unnecessary restrictions on experimental license operations, the Commission believes that the actions in the R&O providing for new program experimental licenses will serve Lockheed Martin's stated recommendation to streamline the Commission's rules. In addition, the Commission takes many additional actions in the R&O based on specific comments to further streamline, simplify, and clarify the experimental licensing process.

B. Program Experimental Radio Licenses

11. In the *NPRM,* the Commission noted that research institutions already use its experimental licensing program to deliver impressive results, but that its existing experimental rules are not always nimble enough to account for the speed of today's technological development. Currently, the rules allow for an experimenter to apply for a conventional experimental license to cover a single or several closely related experiments for 2–5-year periods with options for renewals for up to 5 years. Any qualified company or individual, including students, may apply for a license, and experiments cannot begin until the Commission grants the license. These conventional experimental licenses are characterized by a narrowly defined purpose and specific limitations on frequencies, emissions, and power levels. If, during the course of experimentation, a licensee determines that it would be better served by conducting experiments using parameters that would differ from what was authorized, the licensee must often request a modified or new license before exploring a new line of experimentation. This process can delay the introduction of new technologies into the marketplace and may prevent the American public from expeditiously taking advantage of technological advances.

12. In pursuit of a process that could keep pace with innovation, the Commission proposed in the *NPRM* to establish a new type of experimental license—a program license—under which qualified institutions would be permitted to conduct an ongoing program of research and experimentation under a single experimental authorization for a five-year period on a non-interference basis without having to obtain prior authorization for each distinct experiment or series of unrelated experiments. The Commission's intent was to allow experimentation with limited constraints, and it proposed few requirements for these program licenses beyond a provision for public notice prior to each experiment and an obligation to report results at the conclusion of each experiment. Its proposal was designed to establish a balance that allows organizations the greatest level of flexibility to experiment—particularly in high-value frequency bands that may host the newest generation of consumer devices and applications—in order to unlock enormous economic and social benefits, while respecting the fundamental principle that experiments must be designed to avoid harmful interference to existing services.

13. In the *NPRM,* the Commission proposed to establish three different types of program licenses and further proposed that eligibility for each would require applicants to demonstrate basic expertise in radio management. First, it proposed a research program experimental radio license under which colleges, universities, and non-profit research organizations would be permitted to use a broad range of radio frequencies for research and experimentation. It proposed to restrict the research program experimental license to Accreditation Board for Engineering and Technology (ABET) colleges or universities with graduate research programs or existing industry partnerships and a defined geographic location, or to nationally recognized non-profit research laboratories with a defined geographic location. The Commission reasoned that these institutions typically have a record of generating the types of innovations and technological breakthroughs that it seeks to foster, and argued that this new license option would provide more flexibility to accelerate the rate of these innovations. It proposed to restrict all research experiments to the grounds of the license holder's location and to require that licensees have institutional processes to monitor and effectively manage a wide variety of research projects.

14. Second, the Commission proposed to establish a medical program experimental radio license, available to hospitals and other health care institutions, to expedite the process by which medical equipment is approved under its equipment authorization procedures, eliminate the need to obtain multiple experimental licenses, and encourage the creation of test-beds for medical device innovation. It proposed that this license would be limited to experiments for therapeutic and diagnostic medical equipment designed to comply with the Commission's Rules for such equipment. It noted that the Food and Drug Administration's (FDA) investigational device exemption (IDE) may be applicable when these experiments involve patients. In this regard, the Commission noted that the FDA in consultation with the Commission is exploring approaches to streamline IDEs for wireless medical devices, when an IDE is required. The Commission proposed that the medical program experimental license be supervised by it, in consultation with the FDA, to ensure that patient safety is considered, and noted that the new program is not intended to replace the FDA's existing oversight and review programs.

15. Finally, the Commission proposed an innovation zone experimental radio license to provide greater opportunities for testing and experimentation in specified geographic locations with pre-authorized boundary conditions. It envisioned that such zones, which could include isolated or protected areas, could become havens for enterprise and innovation because they would permit experimenters to explore a variety of technologies with reduced barriers to entry. Its proposal to establish an innovation zone program license was intended to complement its research program license proposal by making a carefully restricted set of locations available to foster robust wireless engineering experimentation and development, but with different eligibility and use restrictions. Specifically, the Commission's proposal stated that innovation zone licensees did not necessarily have to be associated with a college, university, or nonprofit research organization. The Commission further proposed to permit operations over large areas that are available for use by multiple parties, and proposed to prohibit use by a single entity at an exclusive-use facility (such as within the grounds of a large manufacturer's plant).

16. *Decision.* The Commission finds that adding rules for a program experimental license will augment the existing experimental radio license program by affording new options for experimentation that will reduce regulatory delay and uncertainty and promote innovation. The Commission will continue to issue conventional

experimental licenses under existing rules, but it also will have the ability to authorize ongoing experimentation and research for qualified applicants under a program license.

17. The Commission adopts rules for program licenses that differ somewhat from the proposals in the *NPRM* based on comments to the *NPRM* and our further evaluation. As an initial matter, the Commission reduces the categories of program licenses from research, medical, and innovation zones to a single category encompassing all program experimental radio licenses. The rules that it adopts incorporate, to a large extent, the proposals for research and medical program licenses, but not the proposal for the innovation zone program license. The Commission believes, upon further reflection, that distinguishing separate licenses for general research and medical research is unnecessary. Instead, the Commission creates a single program experimental license to encompass all basic research and experimentation. Thus, basic medical research and experimentation conducted by a hospital or health care institution that does not involve ''clinical trials'' will be covered by the program experimental license, and the Commission creates a separate medical testing license for those experiments that do involve clinical trials. Mayo Clinic's comments highlight the fact that there are two types of medical experiments—those involving basic research and those involving real-world patient testing. Moreover, medical experiments that involve patient testing generally require FDA participation. Thus, the Commission finds it more logical and administratively convenient to treat basic medical device research experiments under the program experimental license. The Commission does not believe that the issuance of further guidelines about the Commission's and FDA's respective roles in the application, review, and approval processes should serve as a precondition to or otherwise keep us from adopting the proposed rules. The Commission has an ongoing coordination process in place with FDA regarding medical radiocommunication device matters, and will continue its practice of releasing advice and information as it becomes available. Licensees seeking to test medical devices who have specific questions about the respective roles of the Commission and FDA regarding a planned course of experimentation should continue to raise these matters directly with staff at the respective agencies.

18. The basic framework for a program license differs from a conventional license in several significant ways. A program license will permit innovators to conduct any number of unrelated experiments at defined geographic locations under the licensee's control. Licensees will be able to conduct experiments within a broad range of frequencies, emissions and power levels to support ongoing research. These licenses will be issued for a 5-year term and may be renewed for additional 5-year periods. Eligibility will be limited to certain categories of researchers. Licensees will be required to provide public notice of individual experiments before they are initiated and the results of those experiments after they are concluded. With limited exceptions, experimentation will not be permitted in restricted frequency bands. The Commission discusses all of the requirements for program licenses in detail in the R&O.

19. The Commission believes that a program license will provide a more efficient way for many qualified institutions to conduct cutting-edge research and experimentation and accelerate innovation in RF technology to more quickly transform ideas into important new consumer products and services. The new license will offer experimenters a wide range of flexibility to design their experiments and to change course with respect to frequencies, emissions, and power—subject to certain limitations—as experimenters conduct their research. The Commission believes that establishing such a license will more closely align its rules with the iterative nature of the learning and discovery process that occurs in laboratories today. Further, the Commission notes that this addition to its experimental licensing program will more closely align it with other licensing regimes within the Commission that have moved to a more flexible structure. Experimenters taking advantage of this new option will now be free to follow their research wherever it leads (subject to the basic tenets of the overall experimental license framework, such as not causing harmful interference and operating within the scope of the authorization). This should substantially reduce how often they need to engage the Commission to seek permission to make changes to a preconceived course of experimentation.

20. The Commission emphasizes that this new license will build on its existing experimental license structure, rather than replace it. As with existing experimental licenses, the Commission may, at its discretion, place special conditions on program experimental licenses to ensure that a licensee conducts it experimental program in a manner that ensures that no harmful interference is caused to existing licensees and Federal Government operations as authorized by the National Telecommunications and Information Administration (NTIA). The Commission could, for example, require that experiments be restricted to a specified portion of the program licensee's research campus or conducted during specified hours; require additional coordination for experiments that exceed a certain power level, operate outdoors, or operate on a specific frequency band; or impose additional notification requirements for the first set of experiments that a new licensee conducts under its program experimental license. The Commission emphasizes that such conditions, when imposed, will be narrowly tailored to address specific potential concerns it identifies and that a program experimental licensee will be afforded the freedom to design and conduct a wide range of experiments under the terms of its license.

21. Individuals and institutions that do not qualify for our new program experimental licenses may still apply for conventional experimental licenses. Additionally, institutions that do qualify may nonetheless choose to apply for conventional experimental licenses in certain instances—such as when the particular experiment that they wish to undertake is not permitted under the program experimental license rules. The Commission finds that by providing both conventional experimental license and program experimental license opportunities, it will provide greater flexibility to experimenters and promote greater levels of experimentation that will serve the public interest by spurring innovation, creating new products and services, and ultimately leading to the creation of new jobs. Further, the Commission finds that under the program license, licensees conducting consecutive experiments will accrue cost savings by filing fewer applications and having the ability to begin their experiments in a timelier manner. Thus, the Commission finds that for these licensees the program license will be more efficient than obtaining multiple conventional licenses. These efficiencies should also result in faster service for the remaining conventional license applicants. Accordingly creating a new program experimental license provides significant public benefits at little or no

cost, and so the Commission adopts that proposal, as modified. As proposed, the rules for this new license will be contained in a new subpart E within part 5 of the Commission's rules.

22. Under the rules the Commission adopts, conventional experimental licenses and program experimental licenses will co-exist under its general experimental licensing framework. The Commission observes that experimental radio licenses do not convey any exclusive spectrum rights, and often different conventional experimental licensees have conducted experiments in the same general area on a non-interference basis. If an interference problem is anticipated between an existing conventional experimental licensee and a new program experimental licensee, the Commission sees no reason why this cannot be resolved by the parties, just as is the case at present between two conventional experimental licensees.

23. Research institutions have made important discoveries via the Commission's existing experimental licensing program, and it foresees even greater potential under our new license. The Commission concludes that a research program experimental license has significant potential to advance the state-of-the-art in communications research and applied development, including medical research, thus enhancing economic and social welfare. However, upon consideration of the record in this proceeding and further reflection regarding the fundamental nature of the research program license, the Commission makes certain modifications to the proposal to better align the final rules to expand eligibility and the types of experimentation that will be encompassed.

1. Eligibility

24. Based on the record and the Commission's decision to define a program license as one that supports all types of basic RF research, including medical research, the Commission concludes that it is appropriate to expand the scope of eligibility for program experimental licenses beyond what was proposed in the *NPRM.* Thus, program experimental licenses may be granted to the following qualified entities: A college or university with a graduate research program in engineering that is accredited by ABET; a research laboratory; a hospital or health care institution; a manufacturer of radio frequency equipment; or a manufacturer that integrates RF equipment into its end products. This expanded eligibility will permit enhanced public benefits by significantly expanding the scope of RF research with no public costs.

25. The Commission emphasizes that under the eligibility rules it is adopting, it will limit program experimental licensees to those entities that have demonstrated experience with RF technology (or have partnered with an entity possessing the requisite expertise) and have defined geographic areas. By so doing, program experiments will be unlikely to cause harmful interference to incumbent spectrum licensees, but if that should inadvertently occur, the experimenter will be able to quickly remedy it. To ensure that this condition is met, the Commission will require each applicant for a program license to accompany its application with an explanation of how its staff possesses the expertise with RF technology and to so certify in its application.

26. The Commission finds it unnecessary to require a pilot program before making experimental program licenses widely available. The certification requirements that it is imposing are an appropriate method for ensuring that program licensees do not cause harmful interference to service licensees. The Commission has used similar application certifications in the past to ensure compliance with certain requirements, and it concludes that this approach is suitable here. In this regard, the Commission notes that the Communications Act provides for the Commission to impose penalties, including fines, license revocation, and preclusion from obtaining future Commission licenses on applicants who willfully provide false statements on application forms.

27. Applicants for program experimental licenses must apply on FCC Form 442 (''Application For New or Modified Radio Station Authorization Under part 5 Of FCC Rules—Experimental Radio Service (Other Than Broadcast)''). The Commission is revising this form to include not only conventional experimental licenses, but also program experimental licenses, medical testing experimental licenses, and compliance testing experimental licenses. Each applicant for a program experimental license must specify how it meets the eligibility requirements for such a license, a certification of RF expertise or partnership with another entity possessing such expertise, the purpose of its proposed experimental program, and whether its research program includes federal frequencies, Commercial Mobile Radio Service (CMRS) frequencies, public safety frequencies, or medical testing. The Commission notes that program experimental licenses may not be transferred without its approval. Additionally, applications must specify, and the Commission will grant authorizations for, a geographic area that is inclusive of an institution's real-property facilities where the experimentation will be conducted and that is under the applicant's control. If an applicant needs to conduct experiments in more than one defined geographic area, it must apply for a license for each location. The Commission concludes that because interference issues are unique to each area, the limitation on the geographic scope of a program experimental license provides an appropriate way for the Commission to take these factors into account within the licensing process.

28. The Commission believes that this approach is well tailored for the experimental program license concept. Unlike a conventional experimental license application, which can be filed by any party and is subject to case-by-case analysis, a test planned under the authority of a program license will be conducted by a licensee whose qualifications have already been reviewed by the Commission. This entity will have already committed to design and conduct experimental testing in a way that will not cause harmful interference.

2. General License Requirements

29. In the *NPRM,* the Commission made a number of proposals relating to operating parameters of program experimental licenses. Many of those proposals followed directly from requirements already in place for conventional experimental licenses. First, the Commission proposed that: (1) Program licenses be granted for five year, renewable terms; (2) the Commission has the authority to prohibit or require modification of specific experiments at any time without notice or hearing, if in its discretion the need for such action arises; and (3) all experiments must be conducted on a non-interference basis to primary and secondary licensees, and that the licensee must take all necessary technical and operational steps to avoid harmful interference to authorized services. Commenters strongly supported all of these proposals, and the Commission adopts them.

30. Additionally, the Commission proposed that within 30 days after completion of each experiment, the licensee must file a narrative statement describing its results, including any interference incidents and steps taken to resolve them. It further proposed that, before conducting tests, a licensee must evaluate the propagation characteristics

of the frequencies to be used in individual experiments, the operational nature of the services normally operating on those and nearby frequencies, and the specific operations listed within the Commission's licensing databases. The Commission noted that online tools, such as its General Menu Reports system, which allows users to search many different Commission licensing databases from one place, could facilitate these tasks. Moreover, it proposed that experiments be designed to use the minimum power necessary and be restricted to the smallest practicable area needed to accomplish the experiment's goals, *e.g.,* an individual laboratory, specific building, or designated portion of a campus. The Commission observed that experimenters may also choose to reduce the frequencies used, restrict the time of use, limit the duration of tests, or employ other means to address potential interference concerns. Finally, the Commission proposed to require that all experiments comply with its existing experimental rules involving matters such as protected geographic areas and antenna structure placement. All of these proposals found support in the record, and the Commission also adopts them.

31. In the *NPRM,* the Commission noted that its existing experimental licensing rules require a licensee to transmit the licensee's assigned call sign unless that call sign has been specifically exempted by the terms of the licensee's station authorization. The Commission therefore proposed to require that tests conducted under the authority of a research license either transmit station identification as part of the broadcast or provide detailed testing information (such as starting time and duration) via a web-based reporting portal, and proposed to require the communication of information that is sufficient to identify the license holder and the geographic coordinates of the station. As stated in the *NPRM,* this requirement is important for mitigating interference, should an authorized service licensee receive any. Regarding this proposal, commenters expressed concern only regarding patient confidentiality for experiments involving medical equipment and patients. The Commission concludes that the proposal to require station identification or testing disclosure is sufficiently flexible to accommodate patient confidentiality. In most cases, the testing information that must be disclosed—parameters like starting time and duration—would not implicate patient confidential information, and geographic information would likely identify a healthcare facility's campus broadly as opposed to a specific individual's location. As such, the Commission adopts its proposal to require that tests conducted under the authority of a research license either transmit station identification as part of the broadcast or provide detailed testing information on the Commission's program experimental registration Web site. To the extent that a research program licensee believes that a particular test scenario creates a conflict between the requirement to provide detailed testing information and the necessity to protect patient confidential information, the Commission encourages the licensee to first discuss the matter with Commission staff and the U.S. Department of Health and Human Services. If the licensee concludes that the information it must disclose would jeopardize the confidentiality of patient information, the licensee should then consider pursuing that particular test under the Commission's conventional experimental licensing procedures. The Commission finds that its general program experimental rules will provide a public benefit at minimal cost by ensuring that program experiments can be undertaken on a non-interference basis to incumbent operations, while protecting the confidentiality of medical information.

3. Operating Frequencies and Additional Requirements Related to Safety of the Public

32. In the *NPRM,* the Commission proposed that program experimental licensees be permitted to operate in any frequency band, except in bands exclusively allocated to passive services (as are conventional experimental licensees) or in certain restricted bands. More specifically, it proposed that program licensees—unlike conventional experimental licensees—would not be permitted to operate on the restricted band frequencies that are listed in § 15.205(a) of the Commission's rules, except that they would be permitted to operate in frequency bands above 38.6 GHz unless they are listed in footnote US246 of the Table of Frequency Allocations. Except for these restrictions, the Commission proposed that program licensees be permitted to conduct experiments on all other frequencies, as are conventional licensees, and thus have access to the largest range of frequencies practical to enable a broad range of experimentation. However, for experiments that may affect bands used for the provision of commercial mobile services, emergency notifications, or public safety purposes, the Commission proposed that the program experimental radio licensee develop a specific plan to avoid interference to these bands, prior to commencing operation, including providing:

(a) Notice to parties, including other Commission licensees and end users, who might be affected by the experiment;

(b) provisions for the quick identification and elimination of any harm the experiment may cause; and

(c) an alternate means for accomplishing potentially affected vital public safety functions during the experiment.

33. The Commissions proposed applying these provisions to all experiments that implicate these critical service bands (i.e. bands used for the provision of commercial mobile services, emergency notifications, or public safety purposes), and that they would be in addition to the notification requirements that apply to all program experimental licenses.

34. *Decision.* As proposed, the rules that the Commission adopted will provide authority for program licensees to operate on most bands, but not on specific public safety and passive frequency bands. Parties interested in conducting experiments on these restricted frequency bands must apply for a traditional conventional experimental license and provide the required showing.

35. Regarding appeals for additional flexibility by allowing experiments in the restricted bands at very low power with proper site selection, the Commission does not believe that such a deviation from our proposal is warranted nor is there sufficient evidence to support allowing such experimentation under a program license at this time. Many of the operations in these bands are Federal and must be coordinated with NTIA through its Interdepartment Radio Advisory Committee. The Commission notes that it is not foreclosing experiments of the nature suggested, rather they can be accomplished using the current process of obtaining a conventional experimental license.

36. Regarding operation on other frequencies, including the bands used for critical services described in the *NPRM,* the Commission concurs that in general, program experiments can safely be performed in these bands, provided that a specific plan is developed to ensure no disruption to those services. The Commission appreciates the concern expressed by various licensees, but reiterates that harmful interference

caused by program license experiments to any licensed services is unacceptable and will not be countenanced.

37. For program license experiments that may affect critical service bands (*i.e.* bands used for the provision of commercial mobile services, emergency notifications, or public safety purposes), the Commission adopts its proposal that the program licensee must develop a specific plan to avoid harmful interference to operations in these bands. For purposes of this requirement, the Commission notes that there are many current bands, as well as bands that may be designated in the future used for the provision of various commercial mobile services (including broadband) including, for example—the Cellular Radio Service, Specialized Mobile Radio (SMR) service, broadband Personal Communications Service (PCS), Advanced Wireless Service (AWS), 700 MHz band, Broadband Radio Service (BRS)/Educational Broadband Service (EBS), and Wireless Communications Service in the 2.3 GHz band. That plan must be developed by the program licensee prior to commencing an experiment, and provide notice to licensees and, as appropriate, to end users of the critical service bands who could potentially be affected by the experiment describing how the program licensee intends to quickly identify and eliminate any harm that the experiment may cause. If the experiment may potentially impact safety of the public, the program licensee must specify how potentially affected public safety functions will be provided during the duration of the experiment. The Commission is also requiring that, for these experiments, licensees supplement their web-based notifications described in Section III.B.4., of the R&O, to include a list of the critical service licensees that operate in the affected bands in the geographic vicinity of the planned experiment. Doing so will serve as an effective check that the program experimental licensee has conducted sufficient research to meet the requirement that it has contacted all critical service licensees who might be affected by the experiment, and will aid us in evaluating whether the licensee is conducting its activities with the high level of rigor and diligence that the Commission demands under the program experimental license program.

38. The Commission also concludes that it is not in the public interest to categorically prohibit or restrict experimentation in commercial mobile service bands. The Commission believes that it is desirable to support experimentation in all bands where it is practical, and observes that successful innovation in the commercial mobile service space has the potential to directly and immediately improve some of the most widespread and ubiquitous consumer services. Many entities are engaged in designing products specifically for the these bands that are intended to work with various operators' systems, and eliminating the ability to experiment in this spectrum would remove one of the avenues available for such development. The Commission also notes that experimenters may often work with network providers to develop equipment, and adopting rules limiting such operations would not be to either party's benefit. The Commission also notes that these bands are not restricted bands under part 15, and experimenters in these bands can already test new designs and prototypes on that spectrum. The rules stipulate that all experimentation is on a non-interference basis and that it is incumbent on all experimenters to ensure that they do not cause interference to service licensees' operations or risk fines and the possibility of license forfeiture. Moreover, while many experiments will be fixed, devices often are built for mobility, and the Commission does not find it in the public interest to limit the ability of experimenters to fully test their devices.

39. The Commission adopts its proposed rules to permit program experimental licensees to operate in any frequency band, except for frequency bands exclusively designated as restricted in § 15.205(a) of the Commission's rules, with the additional exception that program licensees would be permitted to operate in frequency bands above 38.6 GHz, unless these bands are listed in footnote US246 of the Table of Frequency Allocations. Additionally, for experiments that may affect bands used for the provision of commercial mobile services, emergency notifications, or public safety purposes, program experimental radio licensees must develop a specific plan to avoid interference to these bands prior to commencing operation. As part of this plan, licensees must provide notice to critical service license and, as appropriate, end users who might be affected by the experiment; provide for the quick identification and elimination of any harm the experiment may cause; and provide an alternate means for accomplishing potentially affected vital public safety functions during the experiment. The Commission emphasizes that the burden is on program licensees to contact any and all commercial mobile service, emergency notification, or public safety licensees who might be affected by a program experiment, even if the probability of harmful interference as the result of that program experiment is thought to be relatively low. The proposed rules were crafted to ensure that harmful interference from program experiments would not occur to any service licensee, and the Commission believes that those rules, together with additional rules adopted, will provide a significant public benefit at minimal cost by creating an environment ripe for experimentation and innovation, while protecting incumbent operations.

4. Responsible Party and Notification Requirements

40. The Commission proposed that each program licensee register its experiments on a newly-created Commission program experimental registration Web site at least seven calendar days prior to the commencement of each experiment. This seven-day period was intended to provide interested parties with sufficient time to assess whether they believe harmful interference may occur to their systems. To ensure that such analysis could be done, the Commission proposed that registrations include the following information:

(1) A narrative statement describing the experiment;

(2) Contact information for the researcher in charge;

(3) Technical details, including:

(i) The frequency or frequency bands;

(ii) The maximum effective isotropically radiated power (EIRP) or effective radiated power (ERP) under consideration;

(iii) The emission designators to be used;

(iv) A description of the geographic area in which the test will be conducted;

(v) The number of units to be used;

(vi) A public safety mitigation plan, if necessary; and

(vii) For medical program experimental radio licenses, the rule part for which the experimental device is intended.

The Commission proposed that, once this seven-day notification period elapsed, an experiment under a program license would be permitted to commence without further approval or additional authorization from the Commission; however, if any licensee of an authorized service raised interference concerns, it would have to contact the program licensee and post its complaint on the Commission's program

experimental registration Web site. In the event that a complaint is lodged, the Commission proposed that the experiment would be placed on hold pending resolution of the complaint. Specifically, it proposed that before conducting an experiment, the program licensee evaluate and account for interference concerns raised by interested parties, and that it would have to obey any instructions from the Commission to delay, modify, or abandon the experiment. Additionally, it proposed that the experiment not be permitted to commence until the parties had resolved the issue. Moreover, it proposed that the complainant bear the burden of proof that the proposed experiment would cause harmful interference, and that the parties work in good faith to resolve the complaint. Finally, the Commission proposed to implement measures, such as adding a Real Simple Syndication (RSS) feed, to make it easier for incumbent licensees and other interested parties to become aware of pending tests and make experimenters aware of their concerns. The *NPRM* sought comment on what those measures should be.

41. *Decision.* The Commission's overriding goal is to ensure that program experiments can proceed in an efficient and expeditious manner, without impairing or causing harmful interference to incumbent operations. The Commission concludes that, based on the comments, some modifications to the *NPRM*'s proposed procedures will provide a better, more equitable way to move forward with program licenses and protect incumbent users. As a baseline, the Commission adopts web-based notification procedure with the information requirements proposed in the *NPRM.* The Commission is also expanding a program experimental licensee's obligations and responsibilities in several significant ways.

42. First, the Commission notes that commenters ask that the Commission explicitly collect contact information for a ''stop buzzer'' point of contact who can immediately shut down an experiment if harmful interference occurs to services entitled under the rules to protection. The Commission's intent with the proposed criteria was that collecting information for the researcher-in-charge would fill this need. However, because this contact could be different than the person actually conducting the experiment, the Commission is explicitly adding a ''stop buzzer'' point of contact to the list of required information in § 5.307 of the rules. It also is adding a new § 5.308 to the rules requiring the ''stop buzzer'' point of contact to be available at all times during operation of each experiment conducted under a program license.

43. Second, while the *NPRM* proposed that program licensees report the specifics of their proposed experiments to the Commission's program experimental registration Web site at least seven calendar days prior to commencement of the experiment, upon reflection the Commission finds ten calendar days to be a more appropriate period. The Commission notes that, in some instances, holidays and weekends would shorten the number of business days in a seven calendar-day period. Increasing the notification period to ten calendar days, will better ensure that licensees, if so interested, have adequate time to examine and respond to an experimental posting in a timely manner. Additionally, the *NPRM* proposed that the incumbent licensee would have the burden of identifying interference concerns, but commenters have convinced the Commission that the proposed procedures would unduly shift the burden of proof regarding interference from experimenters to incumbent users. The Commission finds that it would be better to modify this proposal to better reflect the balance of license rights and interference protection afforded under the existing rules and to be consistent with our policies for conventional experimental licenses. Under the Commission's traditional conventional experimental license program, applicants file with the Commission all relevant information, and the Commission makes a determination as to whether the proposed experiment is: (a) Acceptable as proposed, due to a minimal risk of harmful interference, or (b) unacceptable as proposed, due to a significant risk of harmful interference. The Commission may also impose certain requirements on granted licenses. Based on a re-evaluation of the *NPRM*'s proposal, the Commission agrees with commenters that it should not shift the burden regarding interference analysis onto incumbent licensees. Therefore, the Commission adopts rules that more closely adhere to current policy and procedure for conventional experimental licenses in this regard.

44. First, the Commission is requiring that at the time of application for a program license, applicants indicate whether they intend to operate on CMRS or public safety frequencies. This will provide a simple means for interested CMRS and public safety licensees to determine if they need to seek further information on a program licensee's specific experiments from the web-based registration system. If the Commission becomes aware of an applicant who fails to specify in its application that it will be experimenting on CMRS or public safety frequencies, but once licensed either reports its intent for such use or actually initiates such use, the Commission will take disciplinary action including, but not limited to loss of license and/or fines. If an experimenter alters plans after the initial application to subsequently include CMRS spectrum or public safety frequencies, it must file an application to amend its license. The Commission believes that this procedure, along with the web-based registration of specific experiments, will adequately protect critical operations from harmful interference from tests conducted under program experimental license while still providing for experiment flexibility for program licensees.

45. Second, the Commission adopts a requirement that each web posting include a document describing the planned experiment and explaining the measures being taken to avoid causing harmful interference to any incumbent service licensee. The Commission does not find that describing their experiments in web postings will be excessively burdensome to program licensees, as it can expect them to have already undertaken internal analyses regarding the interference potential of their experiments. Thus, this requirement is intended to provide an open and transparent method for potentially affected service licensees and other interested parties not only to become aware of planned experiments, but also to have assurance that adequate planning that has gone into such experiments.

46. The Commission views this analysis as an essential requirement for program licensees and cautions prospective licensees that this analysis should not be taken lightly. It expects that in exchange for the flexibility the Commission is providing through the program license, program licensees will do a thorough analysis to ensure that incumbent licensees are protected from harmful interference. The Commission notes, that in many instances, this explanation could be brief, such as in cases in which experiments are proposed to be conducted indoors, outdoors at low power, at remote locations, or on unused frequencies. In other instances, where the interference risk is greater, the explanation may need more detail, such as detailed link budgets and propagation and interference analyses.

47. The Commission believes that the requirement for program experimental licensees to post their interference analysis to the Commission's program experimental registration Web site will generally obviate the need for incumbent licensees to perform their own detailed analyses to ensure protection from interference. In this manner, the Commission believes that the burdens associated with preventing harmful interference remain the same as at present—on the potential interferer.

48. The Commission disagrees with commenters that advocate a consent requirement on program licensees that plan to experiment in commercial mobile service spectrum. Implementing a rule requiring consent could slow the ability for innovation without providing any substantial benefits in interference protection to the licensee in return. The Commission also believes that a formal pre-filing coordination requirement is generally unnecessary. The Commission believes that there may be certain circumstances where there may be additional concerns about how a proposed experiment conducted under a program experimental license could potentially affect a commercial mobile service provider's network. The Commission has discretion to place coordination conditions on any experimental license. The Commission will continue to use its discretion to place appropriate conditions on experimental licenses in general and experiments conducted under a program license in particular. The Commission is especially concerned about experiments involving commercial mobile service spectrum in scenarios where it determines there may be an increased risk of causing interference to commercial mobile service licensees—for instance, in public spaces—and may require prior notification or coordination, as necessary. As the Commission gains experience with this new licensing approach, it will be better able to tailor notification and coordination requirements as necessary to apply only those that are most appropriate for the specific circumstances. The Commission also observes that new § 5.311 imposes additional requirements for experiments conducted in critical safety bands, including bands used for the provision of commercial mobile services. In reviewing the Web site posting of the planned experiment, Commission staff could determine that other conditions are necessary; alternately, a licensee who is concerned about a posted experiment plan and who has been unable to resolve its concerns with the experimental licensee could seek assistance from us.

49. The Commission concludes that the approach it implemented for program experimental licenses is both consistent with the current rules and offers additional opportunities for licensees to identify and resolve potential interference concerns. Neither coordination nor consent is required under the current rules. Rather, the Commission examines all applications for conventional experimental licenses and determines whether the proposed operations are acceptable due to the risk of harmful interference. If the Commission determines that an experimental licensee should coordinate with an incumbent licensee to reduce the risk of interference, it may condition the experimental licensee accordingly.

50. The Commission will not require coordination between program licensees and incumbent commercial mobile service providers. It recognizes that there could be situations in which it determines that there would be an increased possibility that a planned program experiment could have a greater potential to cause harmful interference to a commercial mobile service licensee, and the Commission will impose additional requirements in the program licensee—or it may even prohibit the experiment in its entirety. Further, the Commission emphasizes that if it becomes aware that a program licensee is not providing adequate analysis of the interference environment as required by the rules, it may place a coordination requirement on a particular course of experimentation, or even on all future experiments, that are conducted under that license. In addition, if a violation is particularly egregious or if there are instances of repeat violations, the Commission has the authority to cancel that license and deny that entity from operating under a program license in the future. In cases in which the Commission does impose a coordination requirement, it expects that all parties will cooperate to work in good faith to expeditiously resolve any concerns.

51. Some commenters requested that the Commission provide as much as 30 days between a program licensee's notification of their experiment to the web-based registration system and when they could commence their experiment. Those comments were predicated on the *NPRM*'s proposal, which would have placed the burden of proof for claims of harmful interference on the incumbent licensees. Now, with the modified rule which places that burden on the program licensee, the Commission has relieved incumbent licensees of much, if not all, of this task. Nonetheless, the Commission increased the notification period by three days. It believes that this 10-day notification period is a reasonable timeframe to allow incumbents to examine, if they so choose, any filing of interest, while not creating long delays in experimentation. In addition, the Commission notes that all license applications already require contact information to be provided, and it is setting forth specific requirements for program experimental licensees. Service licensees who have questions about a proposed experiment or its accompanying interference analysis will have a ready point of contact.

52. To recap, while a program license will be granted for a series of experiments, each individual experiment must be preceded by a web posting containing information required by the rules. The Commission emphasizes that incumbent licensees may object to a particular experiment, and they may contact the program licensee to try and work out any objections. However, only the Commission has the authority to prevent a program licensee from beginning operations or to order the cessation of operations. The Commission is not adopting the proposal that an experiment automatically not be permitted to commence until the parties resolve all outstanding interference objections. The added requirement that a program experimental licensee must submit an interference analyses in conjunction with its notice of proposed experimentation reduces any benefit from this proposed provision (which the Commission also recognizes could be used to block or delay important experimental work). If an incumbent licensee believes that it will suffer interference and does not informally resolve the matter with the experimental licensee, the incumbent licensee would have to bring its concerns to the Commission for action. In such an event, the Commission would examine the evidence and decide whether the experiment should proceed as planned, should not be permitted to proceed, or if specific notification or coordination requirements should be imposed. The Commission's Office of Engineering and Technology (OET) will issue such a public notice with instructions regarding the complaint procedure.

53. In the R&O, the Commission also addresses the process that will be used for experiments that propose to use exclusive Federal spectrum or shared Federal/non-Federal spectrum. As an initial matter, it notes that under a Memorandum of Understanding (MOU)

between the Commission and NTIA, the Commission will coordinate all such applications for Commission operating licenses with NTIA, which is afforded 15 days to reply to the Commission. Under its application procedures for program licenses, however, the Commission will not be collecting specific frequency information, but rather only location information with the initial application. As described, frequency information will be prior-reported by the licensee to the Commission's Web site before any experimentation may begin. To satisfy its obligation to prior coordinate experiments that will be using either Federal exclusive or Federal shared spectrum, the Commission will add a question to the application form where applicants for a program license can indicate if they are planning on using any spectrum that is allocated to the Federal government on a shared or exclusive basis and, thus, is subject to coordination under the MOU. An affirmative answer will trigger a location-specific coordination with NTIA and based on the outcome of that coordination the Commission may place special conditions on the license which could include a list of frequencies or frequency bands on which the applicant would be restricted from operating on at the proposed location. Applicants who plan on using such spectrum should plan to ensure they apply with sufficient time to complete this coordination prior to the time they intend to begin transmitting as the Commission will not grant authority to operate until the conclusion of the coordination process. The Commission, at that time, will take any action if it deems that any is warranted. As with the similar requirement that it is implementing for experiments on CMRS spectrum, the Commission notes that if it becomes aware of an applicant indicating in its application that it will not be experimenting on frequencies that are part of a Federal spectrum allocation, but once licensed either report its intent for such use or actually initiates such use, the Commission will take disciplinary action including, but not limited to loss of license and/or fines. If an experimenter alters plans after the initial application to subsequently include Federal spectrum, it must file an application to amend its license. The Commission believes that this procedure will adequately protect Federal operations from harmful interference from tests conducted under program experimental license while still providing for experiment flexibility for program licensees.

54. The Commission believes that its amended approach for prior notification of experiments in which the licensee provides a description of how it will avoid interference will result in more carefully planned program experiments, while not imposing an undue burden on experimenters. Further, in developing the Commission's new program experimental registration Web site, it will emphasize the importance of implementing additional measures to make it easier for incumbent licensees and other interested parties to become aware of program experiments, such as by developing an automated process for distributing information regarding program experiments by RSS feeds or other appropriate means. The Commission finds that its overall approach balances the needs of both program licensees and service incumbents, providing a public benefit significantly outweighing its cost.

5. Use Prohibitions

55. In the *NPRM,* the Commission proposed that experiments could not be conducted under a program experimental license when the applicant requires non-disclosure of proprietary information. Several commenters expressed disagreement with that proposal. The *NPRM* also proposed that experiments could not be conducted under a program experimental license when an environmental assessment or orbital debris mitigation plan must be filed with the Commission. There is little or no objection to this aspect of the *NPRM.*

56. *Decision.* Commenters generally request that they be permitted to maintain confidentiality of proprietary information and still take advantage of the flexibility the Commission is affording through the program experimental license. As the Commission has stated throughout this proceeding, its goal is to enable more robust experimentation. With that principle in mind and based on the comments and an examination of our current process, the Commission is modifying the proposal related to the treatment of confidential and proprietary information.

57. The Commission believes that program licensees can describe their experiments under the prior notification procedures and report on the results of their experiments on the Commission's Web site in general terms that do not disclose any proprietary or confidential information. The Commission will require public disclosure of frequency, power, location, emission designators and contact information. The Commission observes that this information, with the exception of power and emission designators, is required for public disclosure today for conventional experimental licenses. The Commission also finds that requiring public disclosure of power and emission designators is necessary so that potentially affected service licensees can assess the program licensee's analysis of interference avoidance and mitigation, given the reduced level of Commission review that may occur prior to specific experiments under the program license. Moreover, the Commission may request that a program licensee provide information in addition to that required by the rules, which could include proprietary or confidential information. For example, such information requests may be necessary to resolve an interference complaint, to gain a better understanding of new technology development, or to audit the program to ensure that parties are conducting actual experiments. If confidential or proprietary information must be disclosed due to Commission request for additional information, it will entertain requests to keep such information from the public, consistent with the current rules for treating confidential information set forth in § 0.459. Failure to comply with a Commission request for additional information or, if review of such information reveals that a licensee is not conducting a program of actual experimentation, could result in forfeiture of the program license and loss of privilege of obtaining such a license in the future. The Commission modifies its rules accordingly. Finally, the Commission reiterates that if entities believe that they need to disclose confidential or proprietary information as part of the justification for their license, they can forego the program experimental license and instead obtain a conventional experimental license.

58. Additionally, the Commission adopts the *NPRM's* proposal to prohibit program experimental licenses when an environmental assessment or orbital debris mitigation plan must be filed with the Commission. It finds that these prohibitions are necessary due to the required Commission review and approval of these filings prior to the onset of operation. The Commission's overall approach to use prohibitions balances the need to reduce the costs of regulatory burdens on experimental licensees and the benefits of protecting the public from harmful interference to existing radio services.

6. Innovation Zones

59. Many commenters are skeptical of the *NPRM's* proposal to create a discrete

innovation zone program license, and the Commission is not doing so in the R&O. Nevertheless, it believes that there is a place for designating specific areas where licensees can operate experimental devices to assess real world performance in the presence of other similar or dissimilar devices, differing terrain, and changing atmospheric conditions. The Commission believes that, if properly structured, such zones can provide equipment developers valuable insight to ensure that their products perform as intended when they become available to the public. Therefore, the Commission establishes a mechanism by which it can create innovation zones—designated geographic areas and frequency ranges—in which program licensees will be afforded additional opportunities to design and conduct experimentation.

60. Commenters observe that establishing an innovation zone under the *NPRM*'s proposed rules would have been a complex undertaking whose risks would have been difficult to evaluate without any experience with other types of program experimental licenses. Further, because the Commission did not propose any restrictions on who could hold an innovation zone license, organizations and individuals not as well-versed in RF spectrum management as research licensees could potentially have obtained such licenses, thereby increasing the interference risk to licensed services. While the Commission has considered restricting eligibility for innovation zone licenses in the same fashion that was proposed in the *NPRM* for research and medical licenses, it declines such an approach, as that could severely limit the utility the Commission envisions for such zones.

61. The Commission concludes that there is a better way to enable the type of widespread experimentation that it envisioned under the *NPRM*'s innovation zone proposal. Accordingly, the Commission adopts rules that allow it—on its own motion or in response to a public request—to designate a defined geographic area and frequency range(s) as an innovation zone for specific types of experiments. An innovation zone designation will not confer operating authority on the entity that owns or manages the designated site. Instead, under the rules that the Commission adopts, it will permit research program experimental licensees to operate in innovation zones within guidelines that will be establish on a case-by-case basis. These zones may include geographic areas beyond a program licensee's authorized area. Thus, the Commission will effectively provide in some circumstances an extension of a research program license, without the licensee being required to modify that license to cover a new location. By modifying the *NPRM*'s proposal in this manner to limit operational authority within an innovation zone to program licensees, the Commission can better manage the potential for harmful interference from individual experiments, while still providing opportunities to test potentially innovative wireless devices in real world operating environments.

62. The Commission recognizes that there must be some limits and constraints to minimize the potential of harmful interference due to operation under this expanded flexibility. First, it reiterates that these innovation zones may be created only by specific Commission action in response to a request, or alternatively, on the Commission's own motion. An innovation zone designation will be conveyed via Public Notice and posted on the Commission's new program experimental registration Web site, detailing the specific geographic area(s) included and the technical parameters, such as frequency bands and power limits, included. In that connection, the Commission observes that OET has delegated authority to generally administer the ERS, which therefore gives it the authority to designate experimental innovation zones and their operational conditions. Second, operation under this authority will not permit a program licensee to abdicate its notification and reporting responsibilities. Prior to operating in an innovation zone, program licensees must provide notification of their intended operations consistent with the procedures adopted in the R&O. It is important that all licensees have full knowledge of operations in an area, so that, if necessary, they can remedy harmful interference. Finally, only program licensees will be permitted to operate in an innovation zone under their existing authorization. Conventional licensees will have to apply for and receive a license modification if they want to expand the scope of their experimentation to an area and frequency band that is part of an innovation zone.

63. Structuring innovation zones in this way will allow targeted experimentation in response to specific industry or regulatory needs. The Commission believes that these innovation zones hold great promise to enable development of robust devices that can withstand the increasingly complex communications environment in which they must operate. Accordingly, the Commission' s revised innovation zone structure can provide a significant public benefit, while reducing substantially the potential interference costs of the *NPRM*'s innovation zone proposal.

C. Compliance Testing License

64. The *NPRM* noted that § 2.803 of the Commission's rules provides for the operation of RF devices for compliance testing, but does not eliminate the requirement to obtain a station license for products that normally require a license to operate. The *NPRM* therefore asked how laboratories engaged in the testing of equipment, that are not themselves manufacturers or licensed service providers, should be authorized to conduct their work. It also asked if the Commission should make specific provisions in its part 5 experimental radio service rules to issue licenses to laboratories accredited by accreditation bodies that it recognizes for RF product testing consistent with their approved competencies.

65. In a related issue, the *NPRM* noted that the Commission's equipment approval process often requires testing at an Open Area Test Site (OATS). The *NPRM* observed that the Commission's existing rules require an experimental license for radiation emissions testing in conjunction with regulatory approval and asked how entities engaged in open area testing, but that are not themselves manufacturers or licensed service providers, should be authorized to conduct their work. The *NPRM* sought comment on whether the Commission should make specific provisions in its part 5 experimental radio service rules to issue licenses to these entities patterned after the program license model.

66. *Decision.* The Commission concurs with the commenters' assessment that it is appropriate for the Commission to issue laboratories engaged in the compliance testing of equipment, including those operating an OATS but that are not themselves manufacturers or licensed service providers, licenses with similar terms, conditions, and renewal processes as we are adopting for program experimental licenses. It will therefore create another type of experimental license—a compliance testing experimental license—to account for the work of test labs that conduct compliance testing under the Commission's equipment authorization program. This license will be available both to those test labs that the Commission currently recognizes for RF product testing and to any other test lab that it finds has sufficient expertise

to undertake such testing. Due to the nature of the compliance testing process, the Commission will not impose on them most of the limitations and reporting requirements that it is imposing on program licenses. Specifically, because compliance testing often involves emission measurements in restricted bands, compliance testing licensees will be exempt from the prohibition on operating in the restricted bands listed in § 15.205(a) of the rules and from operating in the bands allocated exclusively to the passive services. In addition, the Commission will not impose the designation of a ''stop buzzer'' point of contact nor the ten- day notification period requirements on these licenses, as it does not believe that any significant interference risk exists for products reaching this stage of development, when operated by a test lab solely for the purposes of certifying equipment for compliance with our rules. Finally, the Commission will not require the filing of a narrative statement detailing the results of the testing done under this license. By its nature, successful testing results in the issuance of an equipment certification grant and an entry in the Commission's Equipment Authorization System. Test labs are already required to include various test reports and other documentation, negating any need to mandate compliance with the more general program license reporting requirement. Compliance testing experimental licensees will also be exempt from the additional requirements in§ 5.311 of our rules that relate to safety of the public.

67. The Commission does find, however, that some restrictions are necessary on these licenses. First, while it received no comment regarding eligibility, it finds that it is important to limit eligibility to Commission-recognized testing laboratories to provide assurance to the public of the competency of the entities that are engaged in compliance testing and operating under this broad authority. However, the Commission does not currently require that Commission-recognized testing laboratories be accredited, and thus the Commission will not limit eligibility to accredited laboratories. Rather, it will grant compliance testing experimental radio licenses to those laboratories recognized by the Commission as being competent to perform measurements of equipment for equipment authorization.

68. In addition, the Commission will limit the authority of compliance testing experimental licenses to only those testing activities necessary for product certification. Accordingly, compliance testing experimental licensees will not be permitted to conduct immunity testing under this license. Such testing often entails high powered emissions over a very broad swath of spectrum, which could pose a significant risk of interference to other systems, including Federal systems. A traditional conventional experimental license will be required for immunity testing to ensure that all necessary coordination is conducted and that all reasonable precautions against interference are taken. Finally, consistent with the new program and medical testing experimental licenses, the Commission will require compliance testing license applicants to apply on revised FCC Form 442, and it will issue compliance testing licenses for five years and prohibit transfers of such licenses. Each applicant must specify how it is eligible to receive a compliance testing experimental license, such as by including a description or other proof of its qualifications. The Commission finds that this structure will provide public benefits by ensuring efficient compliance testing at minimal costs. Rules specific to this license are contained in a new subpart G within part 5 of the Commission's rules.

D. Medical Testing License

69. The Commission has established an additional type of license to meet specific needs of the medical community for clinical trials—the medical testing license. While non-clinical trial testing is permitted under our program license, the Commission finds that it can best meet medical RF experimentation needs by providing several different types of authorizations that can support a broad range of medical device research, development and testing, rather than limiting such experimentation to the medical program license concept that was proposed in the *NPRM.*

70. As an initial matter, the Commission notes that the medical program experimental radio license proposed in the *NPRM* was narrowly targeted for hospitals and other health care institutions. The Commission proposed that this license would be limited to the testing and operation of new medical devices that use wireless telecommunications technology for therapeutic, monitoring, or diagnostic purposes that have not yet been submitted for equipment certification, or for devices that use RF for ablation, so long as the equipment is designed to meet the Commission's technical rules. As was discussed, ongoing programs of related or unrelated experiments that encompass basic research and experimentation—including medical research and experimentation—logically fall under the broader category of research experiments. Research laboratories and manufacturers, as well as health care institutions, that conduct medical RF experimentation will be eligible for a program license, thus meeting the needs of a broad range of entities. Accordingly, the Commission is not creating a medical-specific program experimental radio license category.

71. *Decision.* The Commission finds that the program license framework may not meet all of the testing needs of the medical device community. For example, licensees that operate under a program license will be required to conduct tests at geographic locations under their control. This will limit the ability of entities doing medical research to conduct clinical trials—particularly those involving patients or devices used for home care.

72. To meet these needs, the Commission establishes the medical testing license. This license will be available to health care facilities as defined in § 95.1103(b) of the rules so they can conduct clinical trials of medical devices that have already passed through the early developmental stage and are ready to be assessed for patient compatibility and use, as well as operational, interference, and RF immunity issues in real world situations. The health care facility itself will be the responsible party for all testing and responsible for proper operation of equipment, as well as being responsible for remedying any interference issues that might arise during the trial. The Commission will scrutinize the qualifications of applicants for medical testing licenses to ensure that they have sufficient expertise in RF management so as not to cause harmful interference to any authorized spectrum user. Similar to the requirement for program experimental licenses, the Commission will require each applicant to submit a statement with its application detailing how it meets eligibility requirement relative to RF expertise.

73. While the Commission will not explicitly condition medical testing licenses on health care facilities obtaining FDA approval to conduct a clinical trial for the RF devices to be tested under a medical testing license, as it can envision some applications where such approval may not be necessary, the Commission cautions that all parties involved in clinical testing must be aware of the FDA's jurisdiction and take all necessary steps to satisfy the requirements of both the FDA and

the Commission prior to testing a device. Thus, medical testing licensees must consider that a license grant by the Commission may not by itself be sufficient to begin testing. Each experimenter must determine whether the device needs specific pre-approval from the FDA, including whether the device meets the criteria for testing under an IDE. The Commission also notes that it and FDA may consult from time to time if questions arise regarding the use of devices under the medical testing license. If the Commission determines that FDA requirements have not been met for a particular device that is the subject of an experiment, it may take action up to and including termination of the experimental license.

74. Because medical testing licenses are primarily designed to address the needs of health care facilities that want to conduct their own clinical trials, they are similar to product development licenses. However, medical testing licenses are targeted to a distinct user community to provide the flexibility needed to conduct clinical trials. Similar to program licenses, the Commission will issue medical testing licenses for five year, renewable terms, and the licensee will be authorized to conduct multiple unrelated experiments under just one license. Although the Commission proposed that medical program licenses be limited to investigations and tests involving therapeutic, monitoring, and diagnostic medical equipment that have not yet been submitted for equipment certification, or for devices that use RF for ablation, the Commission will slightly modify this description to be consistent with the FDA's definition of a medical device. Specifically, it will define a medical device for the purposes of a medical testing license as a device that uses RF wireless technology or communications functions for diagnosis, treatment, or patient monitoring. Under the rules adopted, the Commission will permit medical testing licensees to operate in any frequency band under part 15 (Radio Frequency Devices), part 18 (Industrial, Scientific, and Medical Equipment), or part 95 (Personal Radio Services, Subpart H—Wireless Medical Telemetry Service and Subpart I—Medical Device Radiocommunication Service) of the Commission's rules. The Commission's goal is to speed the process for device development to benefit the public, and it believes that goal is best served by requiring that the device being tested under a medical testing license comply with existing parts 15, 18, or 95 rules, so that additional rulemaking efforts are not necessary. If medical devices do not comply with the technical limits in these rules, they must be tested under a conventional or program experimental license.

75. The Commission notes that harmful interference caused by an experimental licensee to any licensed service is unacceptable, and thus it finds no need to exclude certain Amateur Radio bands from potential use by medical testing licensees. More generally, the Commission does not find the concerns raised regarding medical experimental licenses to be fundamentally different than the concerns raised about research program experimental licenses, which have already been addressed. In particular, any part 5 licensee, including a medical testing licensee, will be responsible for ensuring that harmful interference is not caused to authorized spectrum users. Similarly, medical testing licensees must ensure that their devices are immune to interference affects from authorized services sharing the same bands as their devices. Testing under a medical testing license will allow for such testing. Thus, it will not restrict medical testing licensees from operating in any of the specific bands noted by commenters.

76. To make the medical testing license as useful as possible for clinical trials, the Commission will permit licensees to conduct these trials not only at the facilities (e.g., a hospital) under their control—a requirement for program licensees—but also to conduct product testing in other locations. For example, the Commission will permit licensees to conduct experiments when patients are confined to their homes as they recover from medical procedures or when patients, who are using implanted or body-worn medical devices, are ambulatory. This flexibility is necessary to ensure critical functions for many medical devices—such as remote monitoring, device tolerance to potential interference sources, and patient ability to use devices without the benefit of assistance as critical aspects of experiments conducted outside of medical campuses. Health care facilities will specify their intended area of operation when they apply for a medical testing license, as specified in § 5.404 of our rules. The Commission recognizes that some commenters expressed concerns about the interference potential that could be caused to authorized services if medical experiments are conducted outside a health care facility. The Commission believes that this concern is addressed in several ways. First, a medical testing license will be used primarily for clinical trials, not basic medical research. This means that the basic RF experimentation for the medical device will have already been completed and the device, in many cases, will already have received FDA approval for such testing. In addition, although a health care facility could oversee a clinical trial beyond its facility, it may not want to assume this responsibility in some cases and instead prefer that the device manufacturer or health practitioner, under a conventional or product development trial license, assume responsibility for clinical trials outside the health care facility. The Commission will also require that medical testing licensees follow the same responsible party and designation of ''stop buzzer'' point of contact requirements as program licensees. Finally, the Commission will require that medical testing licensees follow the same notice and reporting requirements as program licensees—*i.e.,* medical testing licensees must provide both prior notification of planned experimentation and a report of experimental results on the Commission's program experimental registration Web site. This public disclosure of medical testing prior to and at the conclusion of each trial will notify authorized users of such testing in their geographic area. The Commission intends to closely monitor medical testing experiments and may revisit these geographic requirements as it gains some experience with this new type of license.

77. In the *NPRM,* the Commission proposed that medical program experimental licensees file yearly reports to the experimental licensing system of the activity that has been performed under their licenses to provide a venue for sharing information that medical researchers would find beneficial in the goal of patient care. No one commented on this proposal. The Commission concludes that a yearly reporting requirement for medical testing licenses will likewise support the sharing of useful information within the medical community, and it adopted such a requirement. These reports will be filed through the same Web site that will be used for registering experiments and will be available to the public. This action will facilitate the dissemination of information obtained in medical testing experiments that may be beneficial in providing improved patient care.

78. Finally, the Commission adopted the *NPRM*'s proposal that tests conducted under a medical experimental authorization not be subject to our traditional station identification rules. As the Commission

observed in the *NPRM,* its past experience in the medical device field suggests that such requirements are impractical for many of the devices expected to be tested under the proposed new authorization, and the typical power level and deployment environment for such devices will serve to reduce the potential for unanticipated interference that cannot be readily identified and resolved.

79. The Commission also notes that health care facilities that wish to enable medical device testing by program licensees under real-world conditions (including testing with patients) can instead request that they be designated as an innovation zone for such testing. Thus, a health care institution that would like to offer its facilities as a test-bed, but lacks the expertise to oversee such operations itself, can petition the Commission to designate their facility as an innovation zone, so that individual developers and manufacturers with research program licenses can use the facility under their license. This approach may be particularly useful for manufacturers who want to test medical or other types of equipment that will be used in a health care setting while it is in the product development stage, but who will not be eligible for the medical testing license. The Commission notes that under the innovation zone approach, the program licensee that the health care facility permits to experiment on its premises would be the responsible party for the testing and operation of equipment within the innovation zone. This is different from the medical testing license, in which the health care facility is the responsible party.

80. These different licensing options represent a multi-faceted approach to facilitate robust medical RF experimentation that responds to the record developed in this proceeding. The medical testing experimental license complements the types of medical RF experimentation that parties will be able to conduct under either a conventional or program experimental license. This overall approach will provide a significant benefit to the public at no public cost by streamlining the process by which medical equipment is approved under our equipment authorization procedures, thus reducing the time it takes to develop cutting-edge medical devices and systems.

E. Broadening Opportunities for Market Trials

81. In the *NPRM,* the Commission noted that market studies and real-world trials, which require operation of equipment prior to authorization, can be vital to the transformation of prototypes to fully functional new products and services that meet consumer needs. This observation continued from the more general examinations of the market study process undertaken by the Commission in the August 2009 *Wireless Innovation NOI* and the March *2010 National Broadband Plan.* The Commission observed in the *NPRM* that its rules generally prohibit marketing or operation of equipment prior to authorization, but that some exceptions exist. Specifically, § 2.803 of the Commission's rules allows for advertising and display, conditional sales to certain businesses, and outright sales of equipment that has not yet been authorized so long as proper notice is provided to the prospective buyer. This rule section also permits a manufacturer to operate its product for demonstration or evaluation purposes under the authority of a local Commission-licensed service provider so long as that equipment operates in the bands licensed to that service provider. Additionally, § 5.3(j) of the rules permits licensees operating non-certified equipment under experimental radio authorizations to conduct ''limited market studies,'' on a case-by-case basis subject to limitations established by the Commission. Because these rules and exceptions are scattered over several rule parts, equipment manufacturers and licensees are often confused as to which particular rules apply to various situations. Thus, the *NPRM* proposed to bring more clarity to the rules regarding the operation and marketing of RF devices prior to equipment approval and also to relax the conditions under which market trials can be conducted to enable more robust market trial activities by a greater number of innovators.

82. As a first step, the *NPRM* proposed to parse the existing rule into separate rule sections—one addressing rules for marketing devices prior to equipment authorization and one addressing operation of devices prior to equipment authorization. These rule sections—§§ 2.803 and 2.805, respectively—would more clearly define the parameters for marketing and operating devices prior to equipment authorization. The Commission adopted the proposed new rule structure, which we find will provide the public benefit of increased clarity at no public cost.

83. The *NPRM* did not propose to alter the substance of the existing rules in § 2.803, but rather proposed only to clarify them so that they would be easier to understand. However, commenters raise an issue with the provision that effectively prohibits operating unauthorized devices in residential areas. Under existing § 2.803(e)(1)(iv) of our rules, RF devices may be operated, but not marketed, for the purposes of ''evaluation of product performance and determination of customer acceptability, provided such operation takes place at the manufacturer's facilities during developmental, design, or pre-production states.''

84. In the case of testing devices in conjunction with a service provider, that provider is the licensee and is ultimately responsible for operations under its license. Moreover, the service provider has a direct interest in not causing interference to its own customers and therefore has a significant incentive to take steps to minimize any risk. The Commission will therefore modify proposed §§ 2.805(b)(3)(iii) and 2.805(b)(3)(iv) of the rules to permit a manufacturer to operate unauthorized equipment in a residential area, so long as it is operated in conjunction with, and under the authority of, a service provider's license. Finally, the rules the Commission adopt requires that licensees in market trials ensure that trial devices are either rendered inoperable or retrieved from trial participants at the conclusion of the trial, and that licensees notify participants in advance of the trial that operation of trial devices is not permitted following the trial. These rules essentially follow existing rules and procedures currently available in the ERS for limited market studies.

85. In consideration of the comments, the Commission will add a provision to the rules in § 2.805(b)(2) to permit general operation of RF devices subject to certification that have not yet been certified without the need for an experimental license, provided that the devices are operated as part of a trade show or exhibition demonstration and at or below the maximum power level permitted for unlicensed devices under its part 15 rules. Current rules provide such an exception only for devices designed to operate under parts 15, 18, or 95, and the Commission is keeping that exception. Expanding this exception to devices designed to operate under any rule part, but capping the power level for demonstration purposes to the part 15 levels, will reduce burdens on manufacturers, as they will no longer need to obtain an experimental license or Special Temporary Authorization (STA), or operate under a third party's service license to conduct such demonstrations. Further, this expansion will increase opportunities for manufacturers to demonstrate their products, with little

potential for increasing interference, as emissions at part 15 levels are currently permitted. The Commission does not find it necessary to restrict such use to indoor only or to preclude in-motion operations. The Commission observes that the current exceptions do not include such restrictions, and it has not received any interference complaints. However, the Commission will not allow RF devices operating under this provision to be used beyond trade shows or exhibitions. Trade show and exhibition schedules and operating hours are known and generally occur in confined areas, and often have their own frequency coordinators, so any instance of harmful interference can be identified and remedied quickly. In contrast, unrestricted use of uncertified devices at any location, even at the part 15 levels, could increase the likelihood of interference to authorized spectrum users without any such ability for quick remediation. Accordingly, the Commission finds that its revised rules strike an appropriate balance between the benefits of enhanced opportunities for manufacturers of RF devices to demonstrate their products and the potential costs of harmful interference to authorized Commission radio services.

1. Product Development and Marketing Trials

86. In the *NPRM,* the Commission proposed to expand upon the existing concept of ''limited market studies'' as currently codified in our part 5 rules. Specifically, it proposed to adopt a new subpart that contains provisions for two types of trials—product development trials and market trials. As an initial matter, because part 5 does not contain a definition of marketing, the Commission proposed to cross-reference the part 2 definition in the revised part 5 market trial rules and sought comment on whether this definition meets the needs of part 5 licensees. It then proposed that a product development trial be defined as an experimental program designed to evaluate product performance in the conceptual, developmental, and design stages, and that a market trial be defined as a program designed to evaluate product performance and customer acceptability prior to the production stage. The Commission proposed that these trials be conducted under the authority of a part 5 license and—because they would typically involve equipment that has not yet been certified—operate as an exception to the general part 2 rule restricting such operation.

87. The *NPRM* envisioned that product development trials could include equipment that would not be able to operate in compliance with existing Commission rules, absent an experimental radio authorization. Thus, the Commission's proposals were designed to generally track the existing rules for limited market studies, in that the *NPRM* proposed to explicitly prohibit the marketing of devices operated as part of a product development trial and retain the requirements that licensees retain ownership of the equipment and they notify users that they are part of a limited market study.

88. Regarding market trials, the Commission recognized that they often involve the offer for sale or lease of a device operated pursuant to a license, so that manufacturers and service providers can evaluate customer demand for new capabilities or services at various price points. It proposed that under a market trial, licensees would be permitted to lease equipment to trial participants. However, it also proposed to continue the prohibition on sale of equipment that has not yet been certified to market trial participants, such as consumer end users, and require that licensees retain ownership of equipment. To do otherwise, the Commission reasoned, would put the ownership of uncertified equipment directly with consumers and complicate the Commission's efforts to enforce its rules when the trial ends. The Commission also proposed to require that licensees ensure that trial devices are either rendered inoperable or are retrieved at the end of the trial. Additionally, recognizing that two parties may plan to conduct a market trial together (*e.g.,* a manufacturer working in conjunction with a service provider), it proposed rules that would permit it to issue a part 5 license to more than one party, and to allow licensees to sell equipment to each other. In these instances, it proposed that one party must be designated as the responsible party for that trial. Finally, to ensure that it would have a licensee identified as the responsible party for all market trials, the Commission proposed that a part 5 license would be necessary for all market trials, even those for devices designed to be authorized under parts 15, 18, or 95 of its rules.

89. *Decision.* The Commission believes that the proposals will expand the availability of trials, so that manufacturers and service providers can gain valuable insight to the needs of consumers prior to offering new products and services to the broader marketplace. Commenters generally agreed, and the Commission adopts those proposals with only minor modifications. The Commission finds that the changes are in the public interest and will provide a significant benefit at little or no cost.

90. The Commission believes that these rules address the concerns that some commenters expressed regarding the potential for proliferation of unauthorized equipment. The prohibition on the sale of such equipment to consumers has been in place for market studies under part 5 rules for some time, as has a requirement that each experimental licensee inform all participants in a market trial that the operation of the service or device is being conducted under an experimental authorization and is strictly temporary. These rules have worked well in the past and the Commission believes that they will continue to function as designed to ensure that trials do not become proxies for actual product or service offerings.

91. Regarding Mayo's concern that the proposed definition of a product development trial in § 5.5 is too narrow and should be expanded to explicitly include medical devices, the Commission concurs. As the Commission has observed in discussions regarding medical testing licenses, medical devices must not only be evaluated in the conceptual, developmental, and design stages, but also through extensive clinical trials. The Commission envisions that a party developing a medical device might seek authorization for a product development trial when, it has developed equipment that would not be able to be operated in compliance with existing Commission rules, absent an experimental radio authorization. To remove any uncertainty about the potential scope of a product development trial, the Commission modifies the definition of a product development trial to specifically include medical devices being used in clinical trials.

92. The rules that the Commission adopts differentiate between product development trials and market trials, as set forth in § 5.501 and 5.502 of our rules, respectively. In a product development trial, licensees must own all of the equipment, must inform all participants of the nature of the trial, and must not market devices or offer services for hire. Market trials, coming later in the development process, will also have requirements that the licensees retain ownership of all equipment, but the Commission will allow limited marketing of equipment. Specifically, it will permit the sale of equipment between licensees in a market trial, provided that they each have an experimental license

authorizing a market trial. The Commission will also permit the lease of equipment to trial participants. As an example, a manufacturer holding an experimental license for a market trial may sell equipment to a similarly licensed service provider, but neither of those licensees may sell equipment to an unlicensed trial participant—rather, those participants may only lease trial equipment. In addition, the rules require that if more than one licensee is authorized for a market trial, one of those licensees must be designated as the responsible party for the trial. The Commission will designate the responsible party, if the parties themselves do not submit that information to us. Finally, the rules require that licensees in market trials ensure that trial devices are either rendered inoperable or retrieved from trial participants at the conclusion of the trial, and that licensees notify participants in advance of the trial that operation of trial devices is not permitted following the trial. These rules essentially follow existing rules and procedures currently available in the ERS for limited market studies.

93. The Commission finds it logical to require that both product development and market trials be authorized under conventional—rather than a program—experimental licenses. The Commission does so in recognition of the inherent difference between product development and market trials and ''regular'' experimentation and testing—the most prominent difference being the necessity to prevent an experimental licensee from creating a *de facto* service through the experimental licensing process. The Commission does not believe that requiring a conventional license—a continuation of the Commission's existing practice for market trials—will diminish either the ability of experimenters to conduct such trials or the independent value of a program license.

94. The Commission believes that these rules will enhance and build on the rules previously available to part 5 licensees for market studies. They provide additional flexibility for manufacturers and service providers to gain an understanding of the viability of their products in the marketplace. The Commission is confident that experimental licenses will take advantage of them and provide a substantial benefit to the American public at minimal cost.

2. Evaluation Kits

95. Evaluation kits typically consist of a component that a manufacturer intends to offer for sale, mounted on a board, with or without an enclosure, in configurations that provide connections to a power supply, easy access to terminals, and sometimes supporting devices or other hardware. The *NPRM* noted that in many instances, developers and system integrators seek to obtain evaluation kits from manufacturers to test and evaluate a component that the manufacturer intends to offer for sale to facilitate the purchaser's development of hardware and software for use with that component. The *NPRM* pointed out that, under the current rules, sales of these kits are not permitted before equipment authorization is granted for the component, and that this restriction delays the ability of manufacturers and system integrators to develop hardware and software for use with the component. Recognizing that this restriction leads to inefficiency in the device development process, the *NPRM* proposed to modify § 2.803 of the rules to allow the sale of these evaluation kits, so long as notice stating that the component has not yet been certified is provided to any buyer.

96. *Decision.* There was no opposition to the proposal to modify § 2.803 to allow for the sale of evaluation kits, provided that notification to the buyer is provided regarding the authorization status of the component. Accordingly, the Commission adopts that proposal. In doing so, it notes, as pointed out by the Telecommunications Industry Association (TIA) and the Semiconductor Industry Association, that not all sales of evaluation kits are prohibited by the rules. However, the Commission's action here removes any ambiguity that may exist over which kits fell into the prohibited category, thus simplifying our regulations for the benefit of continued innovation. Additionally, the Commission incorporates—with some edits—the changes to § 2.1, 2.803, and 2.805 that were recommended by the Semiconductor Industry Association. In particular, the Commission modifies the Semiconductor Industry Association's proposed definition of evaluation kits to include software, as well as to reference system integrators and product developers, so that the definition would read: ''An assembly of components, subassemblies, or circuitry, including software, created by or for a component maker, system integrator, or product developer for the sole purpose of facilitating: (i) End product developer evaluation of all or some of such components, subassemblies, or circuitry, or (ii) the development of software to be used in an end product.''

3. Importation Limits

97. In the *NPRM,* the Commission also addressed rules that place limits on the quantity of devices that can be imported for testing and evaluation to determine compliance with the rules or suitability for marketing. The current rule in § 2.1204(a)(3) permits RF devices to be imported in quantities up to 2000 units for products designed solely for operation within a radio service that requires an operating license, and up to 200 units for all other devices. The Office of Engineering and Technology proposed in its 2006 Biennial Review Staff Report to increase the importation limit for devices that do not require an individual station license from 200 units to 1200 units, and further proposed to treat devices that contain both licensed and unlicensed transmitters as licensed, and therefore subject to the 2000-unit importation limit applicable to licensed devices. The Commission reiterated that proposal in the *NPRM,* stating that these limits would better reflect current manufacturing, design, and marketing techniques, and would also decrease the administrative burden on both industry and the Commission.

98. *Decision.* The rules limiting the importation of devices that have not yet been authorized are intended to strike a balance between ensuring that manufacturers have a sufficient number of devices available for compliance testing and market studies, while also ensuring that unauthorized devices are not distributed to the general public thereby reducing the risk of harmful interference to authorized devices. Originally, the Commission provided that unauthorized devices could be imported in ''limited quantities.'' That ambiguous designation was later clarified to a limit of 200 devices for testing and evaluation to determine compliance with the Commission's Rules and Regulations or suitability for marketing. Subsequently, in 1998, the Commission adopted the current importation limits of 2000 devices for services in which a license is needed and 200 devices for all other services. Since the Commission last modified its rules, the communications market has undergone significant changes characterized by a proliferation of both licensed and unlicensed devices, as well as highly-sophisticated new devices—such as the latest mobile phones—that contain several licensed and unlicensed transmitters. Such devices are being introduced to the marketplace at ever increasing rates. These changes have led to requirements for extensive testing, as well as significant market research

trials, to ensure that these devices will meet user expectations. Device testing is further augmented by the need for devices sold to multiple telecommunications providers to be tested on each provider's network. Thus, based on our experience—as well as the comments—the current importation limits are no longer adequate to meet the industry's needs. The need for increased device testing, in turn, has put additional pressure on the Commission to issue timely waivers of the existing limits, so that manufacturers and telecommunications providers can meet their deadlines.

99. The Commission therefore adopts the proposal to increase the current importation limits. However, based on the comments and our experience in granting waivers of the current limits, the Commission believes that the proposed increase was too modest to make a significant difference to manufacturers or to Commission staff. In particular, it notes that several commenters—requested that the Commission raise the limits beyond what was proposed and that it apply a common limit for all devices. The Commission agrees with the commenters, and thus is adopting rules that increase the importation limit for all devices—those that require a license and those that do not—to 4000 units. Adopting a single limit for all devices will decrease the administrative burden on both manufacturers and the Commission. Additionally, given the number of devices available that contain a mix of unlicensed transmitters and transmitters that require operation pursuant to a Commission license, it finds that the current distinction among device types is less meaningful. Furthermore, the Commission does not expect that an increase in the limit will increase the risk of interference from devices that are solely unlicensed. Based on its experience, the Commission believes that a new 4000-unit limit—which is one-third larger than the 3000-unit limit suggested by Qualcomm—will be sufficient to meet industry's needs. The Commission finds that a 4000-unit limit strikes the proper balance among ensuring that sufficient devices are available for testing, protecting authorized devices from harmful interference, and freeing up Commission resources from addressing excessive numbers of waiver requests. With respect to adoption of the 8000-unit limit recommended by TIA, the Commission finds a four-fold increase would be excessive. To the extent that a TIA member or other party has a specific need to import more than 4000 units for testing, it will continue its past practice of providing reasonable flexibility on a case-by-case basis, subject to justification for a higher number of imported units. Under this approach, the Commission can still accommodate the interest of parties, such as TIA, that advocated for a larger importation limit. Accordingly, the Commission finds that this balanced approach benefits the public by reducing administrative burdens, while guarding against the costs of harmful interference to authorized Commission devices.

F. Modifying and Improving Rules and Procedures

100. *Anechoic Chambers and Faraday Cages.* In the *NPRM,* the Commission proposed to add rules to codify existing practices regarding the treatment of experiments conducted within anechoic chambers and Faraday cages. Specifically, it proposed to permit RF tests and experiments that are fully contained within an anechoic chamber or a Faraday cage to occur without the need for obtaining an experimental license, and inquired whether there should be a minimum standard for the shielding effectiveness of the chamber.

101. Commenters were supportive of the *NPRM*'s proposal to codify the Commission's existing policy of allowing RF tests and experiments that are fully contained within an anechoic chamber or a Faraday cage without the need for obtaining an experimental license. Therefore, the Commission adopted that proposal. In doing so, it observes that all experimenters, even those operating in RF enclosed facilities, are required to comply with the general prohibition against causing harmful interference to other spectrum users. Thus, the Commission expects that experimenters who use these facilities will ensure proper functioning prior to use, including ensuring sufficient isolation of RF energy. Further, the Commission observes it is codifying existing practice that has been in place for quite some time, and that it received no complaints from other spectrum users of harmful interference. Therefore, the Commission does not believe it is necessary to adopt additional standards for emission limits outside these RF enclosures. This approach will reduce administrative burdens and provide cost savings to the public.

102. *Inter and Intra-Agency Coordination Procedures.* The Commission believes that its existing coordination processes and procedures are sufficient. It disagrees with commenters who assert that, once submitted, application status is not readily apparent from checking the on-line experimental licensing system (ELS). In concert with NTIA, the Commission has taken action to provide on-line tools for applicants. First, it notes that applicants can query the ELS for the status of specific applications. Second, at the Commission's recommendation, NTIA has made available on its Web site status information regarding the Commission's applications—including experimental applications—that are being coordinated between the two agencies. Third, applicants may, and often do, call or email OET experimental licensing staff for status updates, and they respond to all inquiries in a timely manner. In that connection, the Commission notes that its experimental licensing staff routinely corresponds with applicants to work out mutually acceptable solutions for all parties. However, the Commission recognizes that parties might find value in having access to more detailed information about the status of their applications and additional methods for interacting with the Commission. The Commission is working on projects to upgrade many of the Commission's electronic filing systems, and it will endeavor to modify the ELS to make more detailed information available. Finally, regarding the timeframe for coordinating with NTIA, the Commission and NTIA have agreed in a Memorandum of Understanding (MOU) to coordination procedures between the two agencies, including a requirement for coordination to be accomplished within 15 working days of such requests. The vast majority of applications are coordinated within this timeframe. In cases where complex concerns are raised, our staff works closely with applicants and NTIA staff to find mutually agreeable solutions. The Commission finds that its current approach reduces administrative burdens and provides cost savings to the public.

103. *Special Temporary Authorization.* In the *NPRM,* the Commission proposed changes to § 5.61, which contains rules for STAs. As an initial matter, BAE Systems points out that it appears that the *NPRM* removed the requirement to file such requests electronically, and recommends that the Commission modify the proposed rule to restore that requirement. The Commission agrees with BAE's recommendation. The proposed removal of this requirement was inadvertent, as the Commission has required electronic filing for quite some time. Accordingly, the Commission is retaining this requirement in § 5.61 of its rules. BAE

also asks that the Commission clarify the rule language in § 5.61(c), which requires an application for a conventional experimental license be ''consistent with the terms and conditions'' of the prior-granted STA in order to obtain an extension of that STA. BAE specifically asks if this means that the application for a conventional license must mirror exactly every technical parameter of the prior-granted STA. Additionally, BAE asks about the situation in which a conventional license is associated with a different government contract than the STA or when it is for internal research and development (IR&D), rather than in support of a contract. The Commission takes this opportunity to state that the parameters of the conventional license application do not need to mirror exactly the parameters of the STA. They may differ so long as any changes do not increase the interference potential of the equipment under test. For example, a change to lower power or antenna height would be permissible, but an increase in those parameters would not. Likewise, a change in location or addition of locations would not be permissible under this rule. Under this guidance, a change in contract number or change to support IR&D rather than a contract would also be acceptable. The Commission will add clarifying language to the rule, which codifies our existing practice and reduces regulatory burdens on some experimental applicants.

104. The Commission observes that a part 5 authorization may be granted for a broad range of research and experimentation, including market trials. Additionally, an ERS applicant must describe the program of research and experimentation proposed and the specific objectives it seeks to accomplish stating ''how the program of experimentation has a reasonable promise of contribution to the development, extension, or expansion, or utilization of the radio art, or is along lines not already investigated.'' The Commission relies on its staff to exercise their expertise and discretion in determining whether particular applications meet the requirements of the part 5 rules and find no need to modify those rules. The Commission finds that the current approach reduces administrative burdens and provides cost savings to the public.

105. *Changes in Equipment and Emission Characteristics.* The *NPRM* proposed to modify § 5.77(a) of the Commission's rules to provide additional flexibility for licensees to make changes to equipment without prior Commission consent provided that certain conditions are met. Specifically, that proposal would require that the power output of the new equipment comply with the license and that the transmitter as a whole or output power rating of the transmitter not be changed. BAE suggests modifying these two conditions to a single one stating that changes can be made to equipment provided that the Effective Radiated Power (ERP) and directivity comply with the license and the regulations governing the license. The Commission agrees that such a change would be beneficial and provide licensees with additional flexibility to alter equipment as necessary without increasing interference potential to authorized services. Therefore, the Commission modified § 5.77 to make this change. BAE also requests that the Commission alter proposed § 5.77(b) to retain language that states that licensees who make changes to their emissions and want such change to become a permanent part of their license may address such changes at the next renewal, rather than adopt the *NPRM's* proposal to require that an application for modification be filed. The Commission disagrees with BAE that any changes are necessary here. The *NPRM's* proposal provides more flexibility than the previous rule, as it allows applicants to file an immediate application for modification to make emission changes permanent. The Commission notes that such a modification can also be made in conjunction with a renewal application as is current practice. Thus, the Commission adopts the *NPRM's* proposed rule change to § 5.77(b).

106. *Recognition of Internal Research and Development.* BAE observes that many applicants for experimental authorization that support homeland security, public safety, and defense priorities require such licenses for IR&D work, in addition to contractual work with various agencies. Accordingly, BAE requests that the Commission explicitly recognize IR&D work on experimental licenses. While the Commission recognizes the value of IR&D in the development of new equipment and techniques, it does not believe that it needs to be explicitly recognized on the experimental license or within the experimental licensing system database. The Commission notes that the vast majority of experimentation is for internal development rather than under a government contract, and so there is no need to track such instances as a separate category. The Commission also notes that it collects government contract information because it is needed in order to grant a non-Federal entity the ability to conduct experiments on a Federal facility's property.

107. *Commercial Off-The-Shelf (COTS) Equipment.* Lockheed Martin observes that both Commission Form 442 and § 5.61 of the Commission's Rules (''Procedure for obtaining a special temporary authorization'') require applicants to identify all equipment to be used in an experiment by supplying the manufacturer name and model number of that equipment. Lockheed Martin argues that this requirement is unnecessary for COTS equipment because § 5.77 of the Commission's rules already permits experimental licensees to make changes to transmitters ''without specific authorization from the Commission provided that the change does not result in operations inconsistent'' (with the terms of the authorization). Lockheed Martin therefore recommends that an experimental applicant or licensee not be required to specify manufacturer identification of any COTS equipment used as part of an experiment. Alternatively, Lockheed Martin recommends that the Commission clarify that COTS equipment can be substituted during the term of the experimental authorization, provided that it otherwise complies with the requirements of the license.

108. The Commission agrees with Lockheed Martin and notes that it has routinely allowed experimental licensees to substitute one piece of COTS equipment for another, provided it does not generally increase the risk of harmful interference to authorized spectrum users. To avoid any confusion on this matter, the Commission is revising the instructions to Form 442 by adding a note stating: ''Provided that commercial off-the-shelf (COTS) equipment used in experiments is operating in accordance with its certification, substituting one piece of COTS equipment for another without notifying the Commission is permitted so long as such equipment substitution will not result in operations inconsistent with the terms of the authorization.'' Licensees should be aware, however, that if they make any modifications to COTS equipment that would invalidate the equipment's certification, they must modify their experimental license accordingly. The Commission believes that this added clarification will reduce regulatory burdens on experimenters by enabling them to more easily choose equipment for conducting their testing, while not increasing the potential for causing

harmful interference to authorized Commission radio services.

109. *Special Grant Conditions.* Lockheed Martin recommends that the Commission change its default practice of issuing special grant conditions that restrict experimentation when an applicant discloses that its experiment supports a U.S. government contract. Lockheed Martin argues that, while there are some instances where coordination requirements in Federal or shared Federal/non-Federal bands will necessitate restricting experimental transmissions only to those necessary to fulfill a government contract, there are other instances where a band can support developers who are working both toward meeting the specific requirements of a contract and on related independent activities designed to advance the state-of-the-art.

110. The Commission is sympathetic to Lockheed Martin's arguments regarding making more efficient use of the spectrum and reducing administrative burdens; however, it declines to make the requested changes, as many special grant procedures are a direct consequence of the type of experiment or location. For example, the Commission does not have the legal authority to allow experimentation at a defense facility without permission of the military. Accordingly, the decision to impose special grant conditions will continue to be made on a case-by-case basis. The Commission notes however, that the use of special grant conditions in some circumstances does not preclude entities from obtaining experimental licenses, either conventional or program, to experiment in most bands for their own internal research and development efforts. The Commission finds that its approach best balances protecting the public from harmful interference to existing radio services and reducing regulatory burdens on experimental applicants.

111. *Permanent Discontinuance of License.* Clearwire contends that it is difficult for a service licensee to determine the source of interference to its operations if it does not know whether experiments have been discontinued or did not take place under an authorization listed in the Commission's database. As a remedy, Clearwire recommends that the Commission enforce § 5.81 of the rules, which requires that ERS licensees who have permanently discontinued their experiments notify OET. As Clearwire notes, the rules already require licensees to notify the Commission if they permanently discontinue their experimental operations. However, it may be that some licensees simply just allow their licenses to expire once they conclude their experiments. To ensure that licensees are fully aware of their obligation to notify the Commission if they cease experimental operations prior to their license expiration date, the Commission adds clarifying language to explicitly state this in the rule in § 5.81. In addition, the Commission notes that if it becomes aware of rule violations, the Commission can take disciplinary action to include fines and/or loss of ability to obtain future licenses.

112. *Coordination Charges.* Clearwire states that it charges ERS applicants the costs of coordinating requests for experimental use of spectrum that Clearwire uses on a primary basis. Boeing disagrees with this practice, and argues that because licensees under the Communications Act do not acquire an ownership interest in their licensed spectrum, the Commission has statutory authority to prohibit licensees from charging fees for reviewing and approving coordination requests for experimental use of spectrum. Clearwire responds that while it agrees with Boeing that ''payment for approval'' by authorized licensees would be inappropriate, such licensees should be permitted to recover their costs of coordinating with ERS applicants. Although the Commission has discretion under part 5 to condition a license on coordination with the primary licensee in a frequency band, the part 5 rules do not address the charging issue. Further, the Commission notes that it did not address this issue in the *NPRM.* Because the Commission does not have proper notice of this issue, the issue is beyond the scope of this proceeding and is not addressed any further.

113. *Electronic Filing of Informal Objections to Experimental License Applications Pursuant to § 5.95.* The Commission adopted electronic filing procedures for experimental license applications using the ELS in 1998, and in a subsequent Order in 2003, mandated the electronic filing of all experimental applications. In that Order, the Commission also adopted a non-substantive procedural rule codifying in § 5.95 of the rules the existing procedures for filing informal objections to experimental license applications, but directed filers to make submissions pursuant to the requirements in §§ 1.41–1.52 of the rules without clarifying how filers should make submissions electronically.

114. Because the ELS did not support processing informal objections at the time § 5.95 was adopted, the Commission adopts a non-substantive procedural change to § 5.95 to clarify that filers shall no longer file informal objections using the process for print mail submissions in §§ 1.41–1.52, but shall submit all informal objections electronically via the ELS as otherwise required in § 5.55 of the rules. OET is releasing a public notice announcing the date after which no further paper filings will be accepted. This change merely clarifies the requirements for mandatory electronic filing. Thus, it is procedural in nature and does not substantively change the information required to be filed with the Commission, making the notice and comment requirements of the Administrative Procedure Act inapplicable.

Procedural Matters

Final Regulatory Flexibility Analysis

115. As required by the Regulatory Flexibility Act of 1980, as amended (RFA) [1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (*NPRM*) in this proceeding.[2] The Commission sought written public comment on the proposals in the *NPRM,* including comments on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

A. Need for and Objectives of the Report and Order

116. The *NPRM* sought to promote innovation and efficiency in spectrum use in the Commission's part 5 Experimental Radio Service (ERS). The *NPRM* proposed specific steps to accelerate the rate at which innovative ideas transform from prototypes to consumer devices and services. These proposals were designed to contribute to advancements in devices and services available to the American public by enabling a quicker equipment development process and promoting greater spectrum efficiency over the long term.

117. The objective of the *Report and Order* (R&O) is to provide increased opportunities for experimentation and innovation. To this end, the R&O establishes new program and testing

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* Promoting Expanded Opportunities for Radio Experimentation and Market Trials Under part 5 of the Commission's Rules and Streamlining Other Related Rules, ET Docket No. 10–236; 2006 Biennial Review of Telecommunications Regulations—Part 2, Administered by the Office of Engineering and Technology (OET), ET Docket 06–155; *Notice of Proposed Rulemaking,* 25 FCC Rcd 16544 (2010); *Erratum,* 26 FCC Rcd 3828 (2011).

[3] *See* 5 U.S.C. 603(a).

experimental radio license that will eliminate administrative burdens on those who are engaged in ongoing programs of research, experimentation, and testing. The current rules allow for an experimenter to apply for and be issued a license to cover a single or a series of closely related experiments—referred to hereinafter as a conventional experimental license—which generally limits the scope of the experiment, frequencies, emissions, and power levels. If licensees want to vary any of their authorized parameters, they must apply for new or modified licenses. While the current process works well for those applicants who need to undertake only a single experiment, it can be cumbersome for applicants who wish to pursue ongoing research and can significantly delay the introduction of new technologies and services into the marketplace. The R&O allows the FCC to continue to issue conventional experimental licenses for specific types of experimentation, but also permits issuance of program and testing experimental licenses to promote ongoing research. The testing licenses are being created to advance the critical areas of medical and compliance testing. All of these new licenses will allow researchers and laboratories to conduct multiple non-related experiments under a single authorization over a longer period of time, thus eliminating regulatory delay and uncertainty.

118. The R&O also broadens opportunities for market studies by revising and consolidating the Commission's existing ERS Rules, promotes greater overall experimentation by streamlining those rules and procedures, and opens new opportunities for experimentation by making targeted modifications to those rules and procedures.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

119. One commenting party, Stephen Crowley, responded directly to the IRFA. Crowley observes that the IRFA provided an estimate of the number of small businesses involved in a variety of radio services, but contends that the IRFA did not provide an analysis describing the impact of the proposed rules on small businesses. Crowley further contends that the IRFA omitted a class of small business that would be impacted if the proposals set forth in the *NPRM* were adopted—namely wireless technology developers. Crowley notes that such developers were precluded from obtaining research program experimental licenses under the proposed rules, and argues that this proposal would force wireless technology developers to obtain conventional experimental licenses, which would impose delays and increased costs on them. Crowley therefore recommends as a significant alternative to the proposed rules that the Commission permit wireless technology developers and other commercial entities to be eligible for research program experimental licenses.[4]

120. Regarding Crowley's contention that the IRFA did not describe the impact of the proposed rules on small businesses, the IRFA solicited comment on that issue, as required by the RFA. Also, the IRFA solicited comment on the impact of the proposed rules on Wireless Telecommunications Carriers (Except Satellite), which includes wireless technology developers. Finally, a number of commenting parties expressed the same concern as Crowley did regarding the proposed exclusion of commercial entities from receiving program experimental licenses. Based on those comments, the Commission decided to modify its proposal to permit manufacturers that have demonstrated expertise in radio spectrum management to receive such licenses.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

121. Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

122. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules.[5] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.''[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[7] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

123. Our action may, over time, affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three comprehensive, statutory small entity size standards that encompass entities that could be directly affected by the proposals under consideration.[8] As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA.[9] Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.''[10] Nationwide, as of 2007, there were approximately 1,621,315 small organizations.[11] Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.''[12] Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States.[13] We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.''[14] Thus, we estimate that

[4] *See* Crowley Comments to *NPRM* at 8–9.

[5] *See* 5 U.S.C. 603(b)(3), 604(a)(3).

[6] *Id.,* 601(6).

[7] *See* 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such terms which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**.''

[8] *See* 5 U.S.C. 601(3)–(6).

[9] *See* SBA, Office of Advocacy, ''Frequently Asked Questions,'' available at *http://web.sba.gov/faqs/faqindex.cfm?areaID=24* (last visited Aug. 31, 2012).

[10] 5 U.S.C. 601(4).

[11] Independent Sector, The New NonProfit Almanac & Desk Reference (2010).

[12] 5 U.S.C. 601(5).

[13] U.S. Census Bureau, Statistical Abstract of the United States: 2011, Table 427 (2007).

[14] The 2007 U.S Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. If we make the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local

Continued

most governmental jurisdictions are small. There is an overall trend of increasing experimental activity. For example, disposals (grants and dismissals) under the ERS increased from 1,067 in 2000 to 1,235 in 2005 to 1,553 in 2011.[15] By contrast, much less activity has taken place under our developmental rules, which we are eliminating in the Report and Order. Since 1999 in the non-broadcast (wireless) radio services, ten developmental licenses were granted under Part 22 (Public Mobile Services), one was granted under Part 80 (Maritime Services), 37 were granted under Part 87 (Aviation Services), and eight were granted under Part 90 (Private Land Mobile Radio Services). None were granted since 1999 under Part 101 (Fixed Microwave Services).

124. Wireless Telecommunications Carriers (except Satellite). Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category.[16] Prior to that time, such firms were within the now-superseded categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' [17] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[18] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show that there were 807 firms that operated for the entire year.[19] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[20] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[21] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[22] Thus, we estimate that the majority of wireless firms are small.

125. *Fixed Microwave Services.* Fixed microwave services include common carrier,[23] private operational-fixed,[24] and broadcast auxiliary radio services.[25] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[26] The Commission does not have data specifying the number of these licensees that have no more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are 22,015 or fewer common carrier fixed licensees and 61,670 or fewer private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies proposed herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

126. *Unlicensed Personal Communications Services.* As its name indicates, Unlicensed Personal Communications Services (UPCS) is not a licensed service. UPCS consists of intentional radiators operating in the frequency bands 1920–1930 MHz and 2390–2400 MHz that provide a wide array of mobile and ancillary fixed communication services to individuals and businesses. The Report and Order potentially affects UPCS operations in the 1920–1930 MHz band; operations in those frequencies are given flexibility to deploy both voice and data-based services. There is no accurate source for the number of operators in the UPCS. Since 2007, the Census Bureau has placed wireless firms within the new, broad, economic census category Wireless Telecommunications Carriers (except Satellite).[27] Prior to that time, such firms were within the now-superseded category of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' [28] Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.[29] Because Census Bureau data are not yet available for the new category, we will estimate small business prevalence using the prior categories and associated data. For the category of Paging, data for 2002 show

government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. City And Towns Totals: Vintage 2011—U.S. Census Bureau, *available at http://www.census.gov/popest/data/cities/totals/2011/index.html*. If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. Census Bureau, Statistical Abstract of The United States 2011, Tables 427, 426 (Data cited therein are from 2007).

[15] These figures include all part 5 experimental application types: New licenses, modifications of licenses, assignment of licenses, license renewals, transfers of control, and grants of Special Temporary Authorization. *See https://fjallfoss.fcc.gov/oetcf/els/reports/GenericSearch.cfm*.

[16] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210*.

[17] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM*.; U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM*.

[18] *See* 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

[19] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size Including Legal Form of Organization,'' Table 5, NAICS code 517211 (issued Nov. 2005).

[20] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[21] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size Including Legal Form of Organization,'' Table 5, NAICS code 517212 (issued Nov. 2005).

[22] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[23] *See* 47 CFR 101 *et seq.* for common carrier fixed microwave services (except Multipoint Distribution Service).

[24] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[25] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's Rules. *See* 47 CFR part 74. This service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile television pickups, which relay signals from a remote location back to the studio.

[26] *See* 13 CFR 121.201, NAICS code 517210.

[27] U.S. Census Bureau, 2007 NAICS Definitions, ''517210 Wireless Telecommunications Categories (Except Satellite)''; *http://www.census.gov/naics/2007/def/ND517210.HTM#N517210*.

[28] U.S. Census Bureau, 2002 NAICS Definitions, ''517211 Paging''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM*.; U.S. Census Bureau, 2002 NAICS Definitions, ''517212 Cellular and Other Wireless Telecommunications''; *http://www.census.gov/epcd/naics02/def/NDEF517.HTM*.

[29] *See* 13 CFR 121.201, NAICS code 517210 (2007 NAICS). The now-superseded, pre-2007 CFR citations were 13 CFR 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

that there were 807 firms that operated for the entire year.[30] Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.[31] For the category of Cellular and Other Wireless Telecommunications, data for 2002 show that there were 1,397 firms that operated for the entire year.[32] Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.[33] Thus, we estimate that the majority of wireless firms are small.

127. *Aviation and Marine Radio Services.* There are approximately 26,162 aviation, 34,555 marine (ship), and 3,296 marine (coast) licensees.[34] The Commission has not developed a small business size standard specifically applicable to all licensees. For purposes of this analysis, the Commission will use the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees.[35] The Commission is unable to determine how many of those licensed fall under this standard. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 62,969 licensees that are small businesses under the SBA standard.[36] In 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For this auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars.[37] Further, the Commission made available Automated Maritime Telecommunications System (''AMTS'') licenses in Auctions 57 and 61.[38] Winning bidders could claim status as a very small business or a very small business. A very small business for this service is defined as an entity with attributed average annual gross revenues that do not exceed $3 million for the preceding three years, and a small business is defined as an entity with attributed average annual gross revenues of more than $3 million but less than $15 million for the preceding three years.[39] Three of the winning bidders in Auction 57 qualified as small or very small businesses, while three winning entities in Auction 61 qualified as very small businesses.

128. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[40] There are a total of approximately 127,540 licensees in these services. Governmental entities[41] as well as private businesses comprise the licensees for these services. All governmental entities with populations of less than 50,000 fall within the definition of a small entity.[42] The small private businesses fall within the ''wireless'' category described *supra.*

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

129. The Report and Order establishes a new type of experimental radio license—the program experimental radio license—to permit qualified institutions to conduct an ongoing program of research and experimentation that would otherwise require the issuance of multiple individual experimental radio license authorizations under the Commission's existing rules. Program experimental radio licensees will have new requirements to file notification of planned experiments to be conducted under the license, resolve interference concerns that are raised by other licensees, and file post-experiment reports with the Commission. The Report and Order also consolidates, clarifies, and streamlines existing rules to facilitate experimentation in the radio spectrum. These rules will permit qualified applicants to engage in additional marketing activities, while streamlining existing rules to eliminate burdensome regulations. We project that by creating a new license type and by revising our existing rules, reporting, recordkeeping and other compliance requirements associated with the issuance of an experimental radio licenses will be reduced.

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

130. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its final rules, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources

[30] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517211 (issued Nov. 2005).

[31] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[32] U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization,'' Table 5, NAICS code 517212 (issued Nov. 2005).

[33] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with ''1000 employees or more.''

[34] Vessels that are not required by law to carry a radio and do not make international voyages or communications are not required to obtain an individual license. *See* Amendment of parts 80 and 87 of the Commission's rules to Permit Operation of Certain Domestic Ship and Aircraft Radio Stations Without Individual Licenses, *Report and Order,* WT 96–82, 11 FCC Rcd 14849 (1996).

[35] *See* 13 CFR 121.201, NAICS code 517210.

[36] A licensee may have a license in more than one category.

[37] *Amendment of the Commission's Rules Concerning Maritime Communications,* PR Docket No. 92–257, Third Report and Order and Memorandum Opinion and Order, 13 FCC Rcd 19853 (1998).

[38] *See* ''*Automated Maritime Telecommunications System Spectrum Auction Scheduled for September 15, 2004, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures,*'' Public Notice, 19 FCC Rcd 9518 (WTB 2004); ''*Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Auction Procedures for Auction No. 61,*'' Public Notice, 20 FCC Rcd 7811 (WTB 2005).

[39] *See* 47 CFR 80.1252.

[40] With the exception of the special emergency service, these services are governed by subpart B of part 90 of the Commission's rules, 47 CFR 90.15–90.27. The police service includes approximately 27,000 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes approximately 23,000 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of approximately 41,000 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are approximately 7,000 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The approximately 9,000 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The approximately 1,000 licensees in the Emergency Medical Radio Service (''EMRS'') use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15–90.27. The approximately 20,000 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33–90.55.

[41] *See* 47 CFR 1.1162.

[42] *See* 5 U.S.C. 601(5).

available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[43]

131. We find that our rules in this proceeding will help alleviate burdens on small entities by simplifying procedures and reducing paperwork, and no alternative rules would be less burdensome. We do not find it appropriate to establish different rules for small entities, as we believe that the rules that we have adopted are not burdensome on any entities.

G. Federal Rules That Might Duplicate, Overlap, or Conflict With the Rules

132. None.

H. Report to Congress

133. The Commission will send a copy of the Report and Order, including this Final Regulatory Flexibility Analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Report and Order, including this Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.[44]

Congressional Review Act

134. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

135. Pursuant to Sections 4(i), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, and 303, this Report and Order *is adopted.*

137. Parts 0, 1, 2, 5, 22, 73, 74, 80, 87, 90, and 101 of the Commission's Rules, 47 CFR parts 0, 1, 2, 5, 22, 73, 74, 80, 87, 90, and 101, *are amended* as set forth in the Order. These revisions will take effect 30 days after publication of a summary of this Report and Order in the **Federal Register**, except for §§ 2.803(c)(2), 5.59, 5.61, 5.63, 5.64, 5.65, 5.73, 5.79, 5.81, 5.107, 5.115, 5.121, 5.123, 5.205, 5.207, 5.217(b), 5.307, 5.308, 5.309, 5.311, 5.404, 5.405, 5.406, 5.504, and 5.602. These rules contain new or modified information collection requirements that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and *will become effective* after the Commission publishes a notice in the **Federal Register** announcing the approval and effective date.

136. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to Congress and the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies)

47 CFR Part 1

Administrative practice and procedures, Reporting and recordkeeping requirements.

47 CFR Parts 2 and 74

Communications equipment, Radio, Reporting and recordkeeping requirements.

47 CFR Part 5

Radio, Reporting and recordkeeping requirements.

47 CFR Parts 22, 73, 80, 87, 90 and 101

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons set forth in the preamble the Federal Communications Commission amends 47 CFR parts 0, 1, 2, 5, 22, 73, 74, 80, 87, 90 and 101 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.406 is amended by revising paragraph (b)(4) to read as follows:

§ 0.406 The rules and regulations.

* * * * *

(b) * * *

(4) *Part 5, experimental radio service.* Part 5 provides for the temporary use of radio frequencies for research in the radio art, for communications involving other research projects, for the development of equipment, data, or techniques, and for the conduct of equipment product development or market trials.

* * * * *

PART 1—PRACTICE AND PROCEDURE

■ 3. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, Cable Landing License Act of 1921, 47 U.S.C. 35–39, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96.

■ 4. Section 1.77 is amended by revising paragraph (d) to read as follows:

§ 1.77 Detailed application procedures; cross references.

* * * * *

(d) Rules governing applications for authorizations in the Experimental Radio Service are set forth in part 5 of this chapter.

* * * * *

■ 5. Section 1.913 is amended by revising paragraph (a)(1) to read as follows:

§ 1.913 Application and notification forms; electronic and manual filing.

(a) * * *

(1) *FCC Form 601, Application for Authorization in the Wireless Radio Services.* FCC Form 601 and associated schedules are used to apply for initial authorizations, modifications to existing authorizations, amendments to pending applications, renewals of station authorizations, special temporary authority, notifications, requests for extension of time, and administrative updates.

* * * * *

■ 6. Section 1.981 is revised to read as follows

§ 1.981 Reports, annual and semiannual.

Where required by the particular service rules, licensees who have entered into agreements with other persons for the cooperative use of radio station facilities must submit annually an audited financial statement reflecting the nonprofit cost-sharing nature of the arrangement to the Commission's offices in Washington, DC or alternatively may be sent to the Commission electronically via the ULS, no later than three months after the close of the licensee's fiscal year.

■ 7. Section 1.1307 is amended by revising the entry ''Experimental Radio,

[43] *See* 5 U.S.C. 603(c).

[44] *See* 5 U.S.C. 604(b).

Auxiliary, Special Broadcast and Other Program Distributional Services (part 74)'' of the table in paragraph (b)(1) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) * * *

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
* * * * * * *	* *
Auxiliary and Special Broadcast and Other Program Distributional Services (part 74)	Subparts G and L: Power > 100 W ERP.
* * * * * * *	* *

* * * * *

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 8. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 9. Section 2.1 is amended by adding the definitions ''End Product'' and ''Evaluation Kit'' in alphabetical order to read as follows:

§ 2.1 Terms and definitions.

* * * * *

End Product. A completed electronic device that has received all requisite FCC approvals and is suitable for marketing.

* * * * *

Evaluation Kit. An assembly of components, subassemblies, or circuitry, including software, created by or for a component maker, system integrator, or product developer for the sole purpose of facilitating: (i) End product developer evaluation of all or some of such components, subassemblies, or circuitry, or (ii) the development of software to be used in an end product.

* * * * *

§ 2.102 [Amended]

■ 10. Section 2.102 is amended by removing and reserving paragraph (b)(2).

■ 11. Section 2.803 is revised to read as follows:

§ 2.803 Marketing of radio frequency products prior to equipment authorization.

(a) Marketing, as used in this section, includes sale or lease, or offering for sale or lease, including advertising for sale or lease, or importation, shipment, or distribution for the purpose of selling or leasing or offering for sale or lease.

(b) *General rule.* No person may market a radio frequency device unless:

(1) For devices subject to authorization under certification, the device has been authorized in accordance with the rules in subpart J of this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter; or

(2) For devices subject to authorization under verification or Declaration of Conformity in accordance with the rules in subpart J of this chapter, the device complies with all applicable technical, labeling, identification and administrative requirements; or

(3) For devices that do not require a grant of equipment authorization under subpart J of this chapter but must comply with the specified technical standards prior to use, the device complies with all applicable, technical, labeling, identification and administrative requirements.

(c) *Exceptions.* The following marketing activities are permitted prior to equipment authorization:

(1) Activities under product development and market trials conducted pursuant to subpart H of part 5.

(2) Limited marketing is permitted, as described in the following text, for devices that could be authorized under the current rules; could be authorized under waivers of such rules that are in effect at the time of marketing; or could be authorized under rules that have been adopted by the Commission but that have not yet become effective. These devices may not be operated unless permitted by § 2.805.

(i) Conditional sales contracts (including agreements to produce new devices manufactured in accordance with designated specifications) are permitted between manufacturers and wholesalers or retailers provided that delivery is made contingent upon compliance with the applicable equipment authorization and technical requirements.

(ii) A radio frequency device that is in the conceptual, developmental, design or pre-production stage may be offered for sale solely to business, commercial, industrial, scientific or medical users (but not an offer for sale to other parties or to end users located in a residential environment) if the prospective buyer is advised in writing at the time of the offer for sale that the equipment is subject to the FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or to centers of distribution.

(iii) (A) A radio frequency device may be advertised or displayed, (*e.g.,* at a trade show or exhibition) if accompanied by a conspicuous notice containing this language:

This device has not been authorized as required by the rules of the Federal Communications Commission. This device is not, and may not be, offered for sale or lease, or sold or leased, until authorization is obtained.

(B) If the device being displayed is a prototype of a device that has been properly authorized and the prototype, itself, is not authorized due to differences between the prototype and the authorized device, this language may be used instead: Prototype. Not for Sale.

(iv) An evaluation kit as defined in § 2.1 may be sold provided that:

(A) Sales are limited to product developers, software developers, and system integrators;

(B) The following notice is included with the kit:

FCC NOTICE: This kit is designed to allow:

(1) Product developers to evaluate electronic components, circuitry, or software associated with the kit to determine whether to incorporate such items in a finished product and

(2) Software developers to write software applications for use with the end product. This kit is not a finished product and when assembled may not be resold or otherwise marketed unless

all required FCC equipment authorizations are first obtained. Operation is subject to the condition that this product not cause harmful interference to licensed radio stations and that this product accept harmful interference. Unless the assembled kit is designed to operate under part 15, part 18 or part 95 of this chapter, the operator of the kit must operate under the authority of an FCC license holder or must secure an experimental authorization under part 5 of this chapter.

(C) The kit is labeled with the following legend: For evaluation only; not FCC approved for resale; and

(D) Any radiofrequency transmitter employed as part of an evaluation kit shall be designed to comply with all applicable FCC technical rules, including frequency use, spurious and out-of-band emission limits, and maximum power or field strength ratings applicable to final products that would employ the components or circuitry to be evaluated.

(d) *Importation.* The provisions of subpart K of this part continue to apply to imported radio frequency devices.

■ 12. Section 2.805 is added to read as follows:

§ 2.805 Operation of radio frequency products prior to equipment authorization.

(a*) General rule.* A radio frequency device may not be operated prior to equipment authorization unless the conditions set forth in paragraphs (b), (c), (d) or (e), of this section are meet. Radio frequency devices operated under these provisions may not be marketed (as defined in § 2.803(a)) except as provided elsewhere in this chapter. In addition, the provisions of subpart K continue to apply to imported radio frequency devices.

(b) Operation of a radio frequency device prior to equipment authorization is permitted under the authority of an experimental radio service authorization issued under part 5 of this chapter.

(c) Operation of a radio frequency device prior to equipment authorization is permitted for experimentation or compliance testing of a device that is fully contained within an anechoic chamber or a Faraday cage.

(d) For devices designed to operate solely under parts 15, 18, or 95 of this chapter without a station license, operation of a radio frequency device prior to equipment authorization is permitted under the following conditions, so long as devices are either rendered inoperable or retrieved at the conclusion of such operation:

(1) The radio frequency device shall be operated in compliance with existing Commission rules, waivers of such rules that are in effect at the time of operation, or rules that have been adopted by the Commission but that have not yet become effective; and

(2) The radio frequency device shall be operated for at least one of these purposes:

(i) Demonstrations at a trade show or an exhibition, provided a notice containing the wording specified in § 2.803(c)(2)(iii) is displayed in a conspicuous location on, or immediately adjacent to, the device; or all prospective buyers at the trade show or exhibition are advised in writing that the equipment is subject to the FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or to centers of distribution; or

(ii) Evaluation of performance and determination of customer acceptability, during developmental, design, or pre-production states. If the device is not operated at the manufacturer's facilities, it must be labeled with the wording specified in § 2.803(c)(2)(iii), and in the case of an evaluation kit, the wording specified in § 2.803(c)(2)(iv)(C).

(e) Operation of a radio frequency device prior to equipment authorization is permitted under either paragraph (e)(1) or (e)(2) of this section so long as devices are either rendered inoperable or retrieved at the conclusion of such operation:

(1) The radio frequency device shall be operated in compliance with existing Commission rules, waivers of such rules that are in effect at the time of operation, or rules that have been adopted by the Commission but that have not yet become effective; and

(i) Under the authority of a service license (only in the bands for which that service licensee holds a license) provided that the licensee grants permission and the licensee continues to remain responsible for complying with all of the operating conditions and requirements associated with its license; or

(ii) Under a grant of special temporary authorization.

(2) The radio frequency device shall be operated at or below the maximum level specified in the table in § 15.209(a) of this chapter for at least one of these purposes:

(i) Demonstrations at a trade show or an exhibition, provided a notice containing the wording specified in § 2.803(c)(2)(iii) is displayed in a conspicuous location on, or immediately adjacent to, the device; or all prospective buyers at the trade show or exhibition are advised in writing that the equipment is subject to the FCC rules and that the equipment will comply with the appropriate rules before delivery to the buyer or to centers of distribution; or

(ii) Evaluation of performance and determination of customer acceptability, during developmental, design, or pre-production states. If the device is not operated at the manufacturer's facilities, it must be labeled with the wording specified in § 2.803(c)(2)(iii), and in the case of an evaluation kit, the wording specified in § 2.803(c)(2)(iv)(C).

■ 13. Section 2.811 is revised to read as follows:

§ 2.811 Transmitters operated under part 73 of this chapter.

Section 2.803(a) through (c) shall not be applicable to a transmitter operated in any of the Radio Broadcast Services regulated under part 73 of this chapter, provided the conditions set out in part 73 of this chapter for the acceptability of such transmitter for use under licensing are met.

■ 14. Section 2.1204 is amended by revising paragraph (a)(3) to read as follows:

§ 2.1204 Import conditions.

(a) * * *

(3) The radio frequency device is being imported in quantities of 4,000 or fewer units for testing and evaluation to determine compliance with the FCC Rules and Regulations, product development, or suitability for marketing. The devices will not be offered for sale or marketed.

(i) Prior to importation of a greater number of units than shown in paragraph (a)(3) of this section, written approval must be obtained from the Chief, Office of Engineering and Technology, FCC; and

(ii) Distinctly different models of a device and separate generations of a particular model under development are considered to be separate devices.

* * * * *

■ 15. Revise part 5 to read as follows:

PART 5—EXPERIMENTAL RADIO SERVICE

Subpart A—General

Sec.
5.1 Basis and purpose.
5.3 Scope of service.
5.5 Definition of terms.

Subpart B—Applications and Licenses

License Requirements

5.51 Eligibility.
5.53 Station authorization required.
5.54 Types of authorizations available.

General Filing Requirements

5.55 Filing of applications.

5.57 Who may sign applications.
5.59 Forms to be used.
5.61 Procedure for obtaining a special temporary authorization.
5.63 Supplemental statements required.
5.64 Special provisions for satellite systems.
5.65 Defective applications.
5.67 Amendment or dismissal of applications.
5.69 License grants that differ from applications.
5.71 License period.
5.73 Experimental report.
5.77 Change in equipment and emission characteristics.
5.79 Transfer and assignment of station authorization for conventional, program experimental, medical testing, and compliance testing experimental radio licenses.
5.81 Discontinuance of station operation.
5.83 Cancellation provisions.
5.84 Non-interference criterion.
5.85 Frequencies and policy governing *frequency* assignment.
5.91 Notification to the National Radio Astronomy Observatory.
5.95 Informal objections.

Subpart C—Technical Standards and Operating Requirements

5.101 Frequency stability.
5.103 Types of emission.
5.105 Authorized bandwidth.
5.107 Transmitter control requirements.
5.109 Responsibility for antenna structure painting and lighting.
5.110 Power limitations.
5.111 Limitations on use.
5.115 Station identification.
5.121 Station record requirements.
5.123 Inspection of stations.
5.125 Authorized points of communication.

Subpart D—Broadcast Experimental Licenses

5.201 Applicable rules.
5.203 Experimental authorizations for licensed broadcast stations.
5.205 Licensing requirements, necessary showing.
5.207 Supplemental reports with application for renewal of license.
5.211 Frequency monitors and measurements.
5.213 Time of operation.
5.215 Program service and charges.
5.217 Rebroadcasts.
5.219 Broadcasting emergency information.

Subpart E—Program Experimental Licenses

5.301 Applicable rules.
5.302 Eligibility.
5.303 Frequencies.
5.304 Area of operations.
5.305 Program license not permitted.
5.307 Responsible party.
5.308 Stop buzzer.
5.309 Notification requirements.
5.311 Additional requirements related to safety of the public.
5.313 Innovation zones.

Subpart F—Medical Testing Experimental Licenses

5.401 Applicable rules.
5.402 Eligibility and usage.
5.403 Frequencies.
5.404 Area of operation.
5.405 Yearly report.
5.406 Responsible party, ''stop-buzzer,'' and notification requirements, and additional requirements related to safety of the public.
5.407 Exemption from station identification requirement.

Subpart G—Compliance Testing Experimental Licenses

5.501 Applicable rules.
5.502 Eligibility.
5.503 Scope of testing activities.
5.504 Responsible party.
5.505 Exemption from station identification requirement.

Subpart H—Product Development and Market Trials

5.601 Product development trials.
5.602 Market trials.

Authority: Secs. 4, 302, 303, 307, 336 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, 336. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

Subpart A—General

§ 5.1 Basis and purpose.

(a) *Basis.* The rules following in this part are promulgated pursuant to the provisions of Title III of the Communications Act of 1934, as amended, which vests authority in the Federal Communications Commission to regulate radio transmissions and to issue licenses for radio stations.

(b) *Purpose.* The rules in this part provide the conditions by which portions of the radio frequency spectrum may be used for the purposes of experimentation, product development, and market trials.

§ 5.3 Scope of service.

Stations operating in the Experimental Radio Service will be permitted to conduct the following type of operations:

(a) Experimentations in scientific or technical radio research.

(b) Experimentations in the broadcast services.

(c) Experimentations under contractual agreement with the United States Government, or for export purposes.

(d) Communications essential to a research project.

(e) Technical demonstrations of equipment or techniques.

(f) Field strength surveys.

(g) Demonstration of equipment to prospective purchasers by persons engaged in the business of selling radio equipment.

(h) Testing of equipment in connection with production or regulatory approval of such equipment.

(i) Testing of medical devices that use RF wireless technology or communications functions for diagnosis, treatment, or patient monitoring.

(j) Development of radio technique, equipment, operational data or engineering data, including field or factory testing or calibration of equipment, related to an existing or proposed radio service.

(k) Product development and market trials.

(l) Types of experiments that are not specifically covered under paragraphs (a) through (k) of this section will be considered upon demonstration of need for such additional types of experiments.

§ 5.5 Definition of terms.

For the purposes of this part, the following definitions shall be applicable. For other definitions, refer to part 2 of this chapter (Frequency Allocations and Radio Treaty Matters; General Rules and Regulations).

Authorized frequency. The frequency assigned to a station by the Commission and specified in the instrument of authorization.

Authorized power. The power assigned to a radio station by the Commission and specified in the instrument of authorization.

Experimental radio service. A service in which radio waves are employed for purposes of experimentation in the radio art or for purposes of providing essential communications for research projects that could not be conducted without the benefit of such communications.

Experimental station. A station utilizing radio waves in experiments with a view to the development of science or technique.

Harmful interference. Any radiation or induction that endangers the functioning of a radionavigation or safety service, or obstructs or repeatedly interrupts a radio service operating in accordance with the Table of Frequency Allocations and other provisions of part 2 of this chapter.

Landing area. As defined by 49 U.S.C. 40102(a)(28), any locality, either of land or water, including airdromes and intermediate landing fields, that is used, or intended to be used, for the landing and take-off of aircraft, whether or not facilities are provided for the shelter, servicing, or repair of aircraft, or for receiving or discharging passengers or cargo.

Market trial. A program designed to evaluate product performance and customer acceptability prior to the production stage, and typically requires

testing a specific product under expected use conditions to evaluate actual performance and effectiveness.

Open Area Test Site. A site for electromagnetic measurements that has a reflective ground plane, and is characterized by open, flat terrain at a distance far enough away from buildings, electric lines, fences, trees, underground cables, pipelines, and other potential reflective objects, so that the effects due to such objects are negligible.

Person. An individual, partnership, association, joint stock company, trust, corporation, or state or local government.

Product development trial. An experimental program designed to evaluate product performance (including medical devices in clinical trials) in the conceptual, developmental, and design stages, and typically requiring testing under expected use conditions.

Subpart B—Applications and Licenses

License Requirements

§ 5.51 Eligibility.

(a) Authorizations for stations in the Experimental Radio Service will be issued only to persons qualified to conduct the types of operations permitted in § 5.3, including testing laboratories recognized by the Commission for radio frequency device testing.

(b) No foreign government or representative thereof is eligible to hold a station license in the Experimental Radio Service.

§ 5.53 Station authorization required.

No radio transmitter shall be operated in the Experimental Radio Service in the United States and its Territories except under and in accordance with a proper station authorization granted by the Commission.

§ 5.54 Types of authorizations available.

The Commission issues the following types of experimental authorizations:

(a)(1) *Conventional experimental radio license.* This type of license is issued for a specific research or experimentation project (or a series of closely-related research or experimentation projects), a product development trial, or a market trial. Widely divergent and unrelated experiments must be conducted under separate licenses.

(2) *Special temporary authorization.* When an experimental program is expected to last no more than six months, its operation is considered to be temporary and the special temporary authorization procedure outlined in § 5.61 must be used.

(b) *Broadcast experimental radio license.* This type of license is issued for the purpose of research and experimentation for the development and advancement of new broadcast technology, equipment, systems or services. This is limited to stations intended for reception and use by the general public.

(c) *Program experimental radio license.* This type of license is issued to qualified institutions and to conduct an ongoing program of research and experimentation under a single experimental authorization subject to the requirements of subpart E of this part. Program experimental radio licenses are available to colleges, universities, research laboratories, manufacturers of radio frequency equipment, manufacturers that integrate radio frequency equipment into their end products, and medical research institutions.

(d) *Medical testing experimental radio license.* This type of license is issued to hospitals and health care institutions that demonstrate expertise in testing and operation of experimental medical devices that use wireless telecommunications technology or communications functions in clinical trials for diagnosis, treatment, or patient monitoring.

(e) *Compliance testing experimental radio license.* This type of license will be issued to laboratories recognized by the FCC under subpart J of part 2 of this chapter to perform:

(1) Testing of radio frequency devices, and

(2) Testing of radio frequency equipment in an Open Area Test Site.

(f) An experimental license is not required when operation of a radiofrequency device is fully contained within an anechoic chamber or a Faraday cage.

General Filing Requirements

§ 5.55 Filing of applications.

(a) To assure that necessary information is supplied in a consistent manner by applicants, standard forms must be used, except for applications for special temporary authorization (STA) and reports submitted for Commission consideration. Standard numbered forms for the Experimental Radio Service are described in § 5.59.

(b) Applications requiring fees as set forth in part 1, subpart G of this chapter must be filed in accordance with § 0.401(b) of this chapter.

(c) Each application for station authorization shall be specific and complete with regard to the information required by the application form and this part.

(1) Conventional license and STA applications shall be specific as to station location, proposed equipment, power, antenna height, and operating frequencies.

(2) Broadcast license applicants shall comply with the requirements in subpart D of this part; Program license applicants shall comply with the requirements in subpart E of this part; Medical Testing license applicants shall comply with the requirements in subpart F of this part; and Compliance Testing license applicants shall comply with the requirements in subpart G of this part.

(d) Filing conventional, program, medical, and compliance testing experimental radio license applications:

(1) Applications for radio station authorization shall be submitted electronically through the Office of Engineering and Technology Web site *http://www.fcc.gov/els*.

(2) Applications for special temporary authorization shall be filed in accordance with the procedures of § 5.61.

(3) Any correspondence relating thereto that cannot be submitted electronically shall instead be submitted to the Commission's Office of Engineering and Technology, Washington, DC 20554.

(e) For broadcast experimental radio licenses, applications for radio station authorization shall be submitted in accordance with the provisions of § 5.59.

§ 5.57 Who may sign applications.

(a) Except as provided in paragraph (b) of this section, applications, amendments thereto, and related statements of fact required by the Commission shall be personally signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer or duly authorized employee, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association. Applications, amendments, and related statements of fact filed on behalf of eligible government entities, such as states and territories of the United States and political subdivisions thereof, the District of Columbia, and units of local government, including incorporated municipalities, shall be signed by such duly elected or appointed officials as may be competent to do so under the laws of the applicable jurisdiction.

(b) Applications, amendments thereto, and related statements of fact required by the Commission may be signed by the applicant's attorney in case of the applicant's physical disability or of his/her absence from the United States. The attorney shall in that event separately set forth the reason why the application is not signed by the applicant. In addition, if any matter is stated on the basis of the attorney's belief only (rather than his/her knowledge), he/she shall separately set forth reasons for believing that such statements are true.

(c) Only the original of applications, amendments, or related statements of fact need be signed; copies may be conformed.

(d) Applications, amendments, and related statements of fact need not be submitted under oath. Willful false statements made therein, however, are punishable by fine and imprisonment, U.S. Code, title 18, Sec. 1001, and by appropriate administrative sanctions, including revocation of station license pursuant to Sec. 312(a)(1) of the Communications Act of 1934, as amended.

(e) ''Signed,'' as used in this section, means an original handwritten signature; however, the Office of Engineering and Technology may allow signature by any symbol executed or adopted by the applicant with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

§ 5.59 Forms to be used.

(a) *Application for conventional, program, medical, and compliance testing experimental radio licenses.*

(1) *Application for new authorization or modification of existing authorization.* Entities must submit FCC Form 442.

(2) *Application for renewal of experimental authorization.* Application for renewal of station license shall be submitted on FCC Form 405. Unless otherwise directed by the Commission, each application for renewal of license shall be filed at least 60 days prior to the expiration date of the license to be renewed.

(3) *Application for consent to assign an experimental authorization.* Application for consent to assign shall be submitted on FCC Form 702 when the legal right to control the use and operation of a station is to be transferred as a result of a voluntary act (contract or other agreement) or an involuntary act (death or legal disability) of the grantee of a station authorization or by involuntary assignment of the physical property constituting the station under a court decree in bankruptcy proceedings, or other court order, or by operation of law in any other manner.

(4) *Application for consent to transfer control of Corporation holding experimental authorization.* Application for consent to transfer control shall be submitted on FCC Form 703 whenever it is proposed to change the control of a corporation holding a station authorization.

(5) *Application for product development and market trials.* Application for product development and market trials shall be submitted on FCC Form 442.

(b) *Applications for broadcast experimental radio license*—(1) *Application for new authorization or modification of existing authorization.* An application for a construction permit for a new broadcast experimental station or modification of an existing broadcast experimental station must be submitted on FCC Form 309.

(2) *Application for a license.* An application for a license to cover a construction permit for a broadcast experimental station must be submitted on FCC Form 310.

(3) *Application for renewal of license.* An application for renewal of station license for a broadcast experimental station must be submitted on FCC Form 311. Unless otherwise directed by the Commission, each application for renewal of license shall be filed at least 60 days prior to the expiration date of the license to be renewed.

§ 5.61 Procedure for obtaining a special temporary authorization.

(a)(1) An applicant may request a Special Temporary Authorization (STA) for operation of a conventional experimental radio service station during a period of time not to exceed 6 months.

(2) Applications for STA must be submitted electronically through the Office of Engineering and Technology Web site *http://www.fcc.gov/els* at least 10 days prior to the proposed operation. Applications filed less than 10 days prior to the proposed operation date will be accepted only upon a showing of good cause.

(3) In special situations, as defined in § 1.915(b)(1) of this chapter, a request for STA may be made by telephone or electronic media provided a properly signed application is filed within 10 days of such request.

(b) An application for STA shall contain the following information:

(1) Name, address, phone number (also email address and facsimile number, if available) of the applicant.

(2) Explanation of why an STA is needed.

(3) Description of the operation to be conducted and its purpose.

(4) Time and dates of proposed operation.

(5) Class(es) of station (*e.g.* fixed, mobile, or both) and call sign of station (if applicable).

(6) Description of the location(s) and, if applicable, geographical coordinates of the proposed operation.

(7) Equipment to be used, including name of manufacturer, model and number of units.

(8) Frequency (or frequency bands) requested.

(9) Maximum effective radiated power (ERP) or equivalent isotropically radiated power (EIRP).

(10) Emission designator (see § 2.201 of this chapter) or describe emission (bandwidth, modulation, etc.)

(11) Overall height of antenna structure above the ground (if greater than 6 meters above the ground or an existing structure, see part 17 of this chapter concerning notification to the FAA).

(c) Extensions of an STA may be granted provided that an application for a conventional experimental license that is consistent with the terms and conditions of that STA (*i.e.,* there is no increase in interference potential to authorized services) has been filed at least 15 days prior to the expiration of the licensee's STA. When such an application is timely filed, operations may continue in accordance with the other terms and conditions of the STA pending disposition of the application, unless the applicant is notified otherwise by the Commission.

§ 5.63 Supplemental statements required.

Applicants must provide the information set forth on the applicable form as specified in § 5.59. In addition, applicants must provide supplemental information as described below:

(a) If installation and/or operation of the equipment may significantly impact the environment (see § 1.1307 of this chapter) an environmental assessment as defined in § 1.1311 of this chapter must be submitted with the application.

(b) If an applicant requests non-disclosure of proprietary information, requests shall follow the procedures for submission set forth in § 0.459 of this chapter.

(c) For conventional and broadcast experimental radio licenses, each application must include:

(1) A narrative statement describing in detail the program of research and experimentation proposed, the specific objectives sought to be accomplished; and how the program of experimentation has a reasonable

promise of contribution to the development, extension, or expansion, or use of the radio art, or is along lines not already investigated.

(2) If the authorization is to be used for the purpose of fulfilling the requirements of a contract with an agency of the United States Government, a narrative statement describing the project, the name of the contracting agency, and the contract number.

(3) If the authorization is to be used for the sole purpose of developing equipment for exportation to be employed by stations under the jurisdiction of a foreign government, a narrative statement describing the project, any associated contract number, and the name of the foreign government concerned.

(4) If the authorization is to be used with a satellite system, a narrative statement containing the information required in § 5.64.

(d) For program experimental radio licenses, each application must include:

(1) A narrative statement describing how the applicant meets the eligibility criteria set forth in subpart E of this part.

(2) If the authorization is to be used for the purpose of fulfilling the requirements of a contract with an agency of the United States Government, a narrative statement describing the project, the name of the contracting agency, and the contract number.

(3) If the authorization is to be used for the sole purpose of developing equipment for exportation to be employed by stations under the jurisdiction of a foreign government, a narrative statement describing the project, any associated contract number, and the name of the foreign government concerned.

(e) For medical testing and compliance testing experimental radio licenses, each application must include a narrative statement describing how the applicant meets the eligibility criteria set forth in §§ 5.402(a) and 5.502 respectively.

§ 5.64 Special provisions for satellite systems.

(a) Construction of proposed experimental satellite facilities may begin prior to Commission grant of an authorization. Such construction is entirely at the applicant's risk and does not entitle the applicant to any assurances that its proposed experiment will be subsequently approved or regular services subsequently authorized. The applicant must notify the Commission's Office of Engineering and Technology in writing that it plans to begin construction at its own risk.

(b) Except where the satellite system has already been authorized by the FCC, applicants for an experimental authorization involving a satellite system must submit a description of the design and operational strategies the satellite system will use to mitigate orbital debris, including the following information:

(1) A statement that the space station operator has assessed and limited the amount of debris released in a planned manner during normal operations, and has assessed and limited the probability of the space station becoming a source of debris by collisions with small debris or meteoroids that could cause loss of control and prevent post-mission disposal;

(2) A statement that the space station operator has assessed and limited the probability of accidental explosions during and after completion of mission operations. This statement must include a demonstration that debris generation will not result from the conversion of energy sources on board the spacecraft into energy that fragments the spacecraft. Energy sources include chemical, pressure, and kinetic energy. This demonstration shall address whether stored energy will be removed at the spacecraft's end of life, by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy, or through other equivalent procedures specifically disclosed in the application;

(3) A statement that the space station operator has assessed and limited the probability of the space station becoming a source of debris by collisions with large debris or other operational space stations. Where a space station will be launched into a low-Earth orbit that is identical, or very similar, to an orbit used by other space stations, the statement must include an analysis of the potential risk of collision and a description of what measures the space station operator plans to take to avoid in-orbit collisions. If the space station operator is relying on coordination with another system, the statement shall indicate what steps have been taken to contact, and ascertain the likelihood of successful coordination of physical operations with, the other system. The statement must disclose the accuracy—if any—with which orbital parameters of non-geostationary satellite orbit space stations will be maintained, including apogee, perigee, inclination, and the right ascension of the ascending node(s). In the event that a system is not able to maintain orbital tolerances, *i.e.,* it lacks a propulsion system for orbital maintenance, a statement disclosing that fact shall be included in the debris mitigation disclosure. Such systems shall also indicate the anticipated evolution over time of the orbit of the proposed satellite or satellites. Where a space station operator requests the assignment of a geostationary-Earth orbit location, it shall assess whether there are any known satellites located at, or reasonably expected to be located at, the requested orbital location, or assigned in the vicinity of that location, such that the station keeping volumes of the respective satellites might overlap. If so, the statement shall identify those parties and describe the measures that will be taken to prevent collisions;

(4) A statement detailing the post-mission disposal plans for the space station at end of life, including the quantity of fuel—if any—that will be reserved for post-mission disposal maneuvers. For geostationary-Earth orbit space stations, the statement shall disclose the altitude selected for a post-mission disposal orbit and the calculations that are used in deriving the disposal altitude. The statement shall also include a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the space station. An assessment shall include a statement as to the likelihood that portions of the spacecraft will survive re-entry and reach the surface of the Earth, and the probability of human casualty as a result.

§ 5.65 Defective applications.

(a) Applications that are defective with respect to completeness of answers to required questions, execution or other matters of a purely formal character may be found to be unacceptable for filing by the Commission, and may be returned to the applicant with a brief statement as to the omissions.

(b) If an applicant is requested by the Commission to file any documents or information not included in the prescribed application form, failure to comply with such request will constitute a defect in the application.

(c) Applications not in accordance with the Commission's rules, regulations, or other requirements will be considered defective unless accompanied either by:

(1) A petition to amend any rule, regulation, or requirement with which the application is in conflict; or

(2) A request for waiver of any rule, regulation, or requirement with which the application is in conflict. Such request shall show the nature of the

waiver desired and set forth the reasons in support thereof.

§ 5.67 Amendment or dismissal of applications.

(a) Any application may be amended or dismissed without prejudice upon request of the applicant. Each amendment to or request for dismissal of an application shall be signed, authenticated, and submitted in the same manner as required for the original application. All subsequent correspondence or other material that the applicant desires to have incorporated as a part of an application already filed shall be submitted in the form of an amendment to the application.

(b) Defective applications, as defined in § 5.65, are subject to dismissal without prejudice.

§ 5.69 License grants that differ from applications.

If the Commission grants a license or special temporary authority with parameters that differ from those set forth in the application, an applicant may reject the grant by filing, within 30 days from the effective date of the grant, a written description of its objections. Upon receipt of such objection, the Commission will coordinate with the applicant in an attempt to resolve issues arising from the grant.

(a) Applicants may continue operating under the parameters of a granted special temporary authority (STA) during the time any problems are being resolved when:

(1) An application for a conventional license has been timely filed in accordance with § 5.61; and

(2) The application for conventional license is for the same facilities and technical limitations as the existing STA.

(b) The applicant, at its option, may accept a grant-in-part of their license while working to resolve any issues.

§ 5.71 License period.

(a) *Conventional experimental radio licenses.* (1) The regular license term is 2 years. An applicant may request a license term up to 5 years, but must provide justification for a license of that duration.

(2) A license may be renewed for an additional term not exceeding 5 years, upon an adequate showing of need to complete the experiment.

(b) *Program, medical testing, and compliance testing experimental radio licenses.* Licenses are issued for a term of 5 years and may be renewed for up to 5 years upon an adequate showing of need.

(c) *Broadcast experimental radio license.* Licenses are issued for a one-year period and may be renewed for an additional term not exceeding 5 years, upon an adequate showing of need.

§ 5.73 Experimental report.

(a) The following provisions apply to conventional experimental radio licenses and to medical testing experimental licenses that operate under part 15, Radio Frequency Devices; part 18, Industrial, Scientific, and Medical Equipment, part 95, Personal Radio Services subpart H—Wireless Medical Telemetry Service; or part 95, subpart I—Medical Device Radiocommunication Service:

(1) The Commission may, as a condition of authorization, request that the licensee forward periodic reports in order to evaluate the progress of the experimental program.

(2) An applicant may request that the Commission withhold from the public certain reports and associated material and the Commission will do so unless the public interest requires otherwise. These requests should follow the procedures for submission set forth in § 0.459 of this chapter.

(b) The provisions in § 5.207 apply to broadcast experimental radio licenses.

(c) The provisions in § 5.309 apply to program experimental licenses and to medical testing experimental licenses that do not operate under part 15, Radio Frequency Devices; part 18, Industrial, Scientific, and Medical Equipment, part 95, Personal Radio Services subpart H—Wireless Medical Telemetry Service; or part 95, subpart I—Medical Device Radiocommunication Service.

§ 5.77 Change in equipment and emission characteristics.

(a) The licensee of a conventional or broadcast experimental radio station may make any changes in equipment that are deemed desirable or necessary provided:

(1) That the operating frequency is not permitted to deviate more than the allowed tolerance;

(2) That the emissions are not permitted outside the authorized band;

(3) That the ERP (or EIRP) and antenna complies with the license and the regulations governing the same; and

(b) For conventional experimental radio stations, the changes permitted in paragraph (a) of this section may be made without prior authorization from the Commission provided that the license supplements its application file with a description of such change. If the licensee wants these emission changes to become a permanent part of the license, an application for modification must be filed.

(c) Prior authorization from the Commission is required before the following antenna changes may be made at a station at a fixed location:

(1) Any change that will either increase the height of a structure supporting the radiating portion of the antenna or decrease the height of a lighted antenna structure.

(2) Any change in the location of an antenna when such relocation involves a change in the geographic coordinates of latitude or longitude by one second or more, or when such relocation involves a change in street address.

§ 5.79 Transfer and assignment of station authorization for conventional, program experimental, medical testing, and compliance testing experimental radio licenses.

A station authorization, the frequencies authorized to be used by the grantee of such authorization, and the rights therein granted by such authorization shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, unless the Commission decides that such a transfer is in the public interest and gives its consent in writing.

§ 5.81 Discontinuance of station operation.

In case of permanent discontinuance of operation of a station in the Experimental Radio Service prior to the license expiration date, the licensee shall notify the Commission. Licensees who willfully fail to do so may be subject to disciplinary action, including monetary fines, by the Commission.

§ 5.83 Cancellation provisions.

The applicant for a station in the Experimental Radio Services accepts the license with the express understanding that:

(a) The authority to use the frequency or frequencies permitted by the license is granted upon an experimental basis only and does not confer any right to conduct an activity of a continuing nature; and

(b) The grant is subject to change or cancellation by the Commission at any time without notice or hearing if in its discretion the need for such action arises. However, a petition for reconsideration or application for review may be filed to such Commission action.

§ 5.84 Non-interference criterion.

Operation of an experimental radio station is permitted only on the condition that harmful interference is not caused to any station operating in accordance with the Table of Frequency Allocation of part 2 of this chapter. If harmful interference to an established

radio service occurs, upon becoming aware of such harmful interference the Experimental Radio Service licensee shall immediately cease transmissions. Furthermore, the licensee shall not resume transmissions until the licensee establishes to the satisfaction of the Commission that further harmful interference will not be caused to any established radio service.

§ 5.85 Frequencies and policy governing frequency assignment.

(a) Stations operating in the Experimental Radio Service may be authorized to use any Federal or non-Federal frequency designated in the Table of Frequency Allocations set forth in part 2 of this chapter, provided that the need for the frequency requested is fully justified by the applicant, except that experimental stations may not use any frequency or frequency band exclusively allocated to the passive services (including the radio astronomy service). Stations authorized under subparts E and F are subject to additional restrictions.

(b) Frequency or frequency bands are assigned to stations in the Experimental Radio Service on a shared basis and are not assigned for the exclusive use of any one licensee. Frequency assignments may be restricted to specified geographical areas.

(c) *Broadcast experimental radio stations.* (1) The applicant shall select frequencies best suited to the purpose of the experimentation and on which there appears to be the least likelihood of interference to established stations.

(2) Except as indicated only frequencies allocated to broadcasting service are assigned. If an experiment cannot be feasibly conducted on frequencies allocated to a broadcasting service, an experimental station may be authorized to operate on other frequencies upon a satisfactory showing of the need therefore and a showing that the proposed operation can be conducted without causing harmful interference to established services.

(d) *Use of Public Safety Frequencies.*

(1) *Conventional experimental licenses.* Applicants in the Experimental Radio Service shall avoid use of public safety frequencies identified in part 90 of this chapter except when a compelling showing is made that use of such frequencies is in the public interest. If an experimental license to use public safety radio frequencies is granted, the authorization will include a condition requiring the experimental licensee to coordinate the operation with the appropriate frequency coordinator or all of the public safety licensees using the frequencies in question in the experimenter's proposed area of operation.

(2) *Program experimental licenses.* A program licensee shall plan a program of experimentation that avoids use of public safety frequencies, and may only operate on such frequencies when it can make a compelling showing that use of such frequencies is in the public interest. A licensee planning to operate on public safety frequencies must incorporate its public interest showing into the narrative statement it prepares under § 5.309(a)(1), and must coordinate, prior to operating, with the appropriate frequency coordinator or all of the public safety licensees that operate on the frequencies in question in the program experimental licensee's proposed area of operation

(e) The Commission may, at its discretion, condition any experimental license or STA on the requirement that before commencing operation, the new licensee coordinate its proposed facility with other licensees that may receive interference as a result of the new licensee's operations.

(f) *Protection of FCC monitoring stations.* (1) Applicants may need to protect FCC monitoring stations from interference and their station authorization may be conditioned accordingly. Geographical coordinates of such stations are listed in § 0.121(b) of this chapter.

(2) In the event that calculated value of expected field strength exceeds a direct wave fundamental field strength of greater than 10 mV/m in the authorized bandwidth of service (-65.8 dBW/m^2 power flux density assuming a free space characteristic impedance of 120π ohms) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, the applicant should call the FCC, telephone 1–888–225–5322 (1–888–CALL FCC).

(3) Coordination is suggested particularly for those applicants who have no reliable data that indicates whether the field strength or power flux density figure indicated in paragraph (f)(2) of this section would be exceeded by their proposed radio facilities (except mobile stations). The following is a suggested guide for determining whether coordination is needed:

(i) All stations within 2.4 kilometers (1.5 statute miles);

(ii) Stations within 4.8 kilometers (3 statute miles) with 50 watts or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iii) Stations within 16 kilometers (10 statute miles) with 1 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station;

(iv) Stations within 80 kilometers (50 statute miles) with 25 kW or more average ERP in the primary plane of polarization in the azimuthal direction of the Monitoring Station.

(4) Advance coordination for stations operating above 1000 MHz is recommended only where the proposed station is in the vicinity of a monitoring station designated as a satellite monitoring facility in § 0.121(b) of this chapter and also meets the criteria outlined in paragraphs (f)(2) and (3) of this section.

§ 5.91 Notification to the National Radio Astronomy Observatory.

In order to minimize possible harmful interference at the National Radio Astronomy Observatory site located at Green Bank, Pocahontas County, West Virginia, and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, West Virginia, any applicant for an Experimental Radio Service station authorization other than a mobile, temporary base, or temporary fixed station, within the area bounded by 39°15′ N on the north, 78°30′ W on the east, 37°30′ N on the south and 80°30′ W on the west shall, at the time of filing such application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, P.O. Box NZ2, Green Bank, West Virginia 24944, in writing, of the technical particulars of the proposed station. Such notification shall include the geographical coordinates of the antenna, antenna height, antenna directivity if any, frequency, type of emission, and power. In addition, the applicant shall indicate in its application to the Commission the date notification was made to the Observatory. After receipt of such applications, the Commission will allow a period of twenty (20) days for comments or objections in response to the notifications indicated. If an objection to the proposed operation is received during the twenty-day period from the National Radio Astronomy Observatory for itself or on behalf of the Naval Radio Research Observatory, the Commission will consider all aspects of the problem and take whatever action is deemed appropriate.

§ 5.95 Informal objections.

A person or entity desiring to object to or to oppose an Experimental Radio application for a station license or authorization may file an informal objection against that application. The informal objection and any responsive pleadings shall be submitted

electronically consistent with the requirements set forth in § 5.55.

Subpart C—Technical Standards and Operating Requirements

§ 5.101 Frequency stability.

Experimental Radio Service licensees shall ensure that transmitted emissions remain within the authorized frequency band under normal operating conditions: Equipment is presumed to operate over the temperature range −20 to +50 degrees Celsius with an input voltage variation of 85% to 115% of rated input voltage, unless justification is presented to demonstrate otherwise.

§ 5.103 Types of emission.

Stations in the Experimental Radio Service may be authorized to use any of the classifications of emissions covered in part 2 of this chapter.

§ 5.105 Authorized bandwidth.

The occupied bandwidth of transmitted emissions from an Experimental Radio Service station shall not exceed the authorized bandwidth specified in the authorization. Each authorization will show, as the prefix to the emission classification, a figure specifying the necessary bandwidth. The application may request an authorized bandwidth that is greater than the necessary bandwidth for the emission to be used, if required for the experimental purpose. Necessary bandwidth and occupied bandwidth are defined and determined in accordance with § 2.1 and § 2.202 of this chapter.

§ 5.107 Transmitter control requirements.

Each licensee shall be responsible for maintaining control of the transmitter authorized under its station authorization, including the ability to terminate transmissions should interference occur.

(a) *Conventional experimental radio stations.* The licensee shall ensure that transmissions are in conformance with the operating characteristics prescribed in the station authorization and that the station is operated only by persons duly authorized by the licensee.

(b) *Program experimental radio stations.* The licensee shall ensure that transmissions are in conformance with the requirements in subpart E of this part and that the station is operated only by persons duly authorized by the licensee.

(c) *Medical testing experimental radio stations.* The licensee shall ensure that transmissions are in conformance with the requirements in subpart F of this part and that the station is operated only by persons duly authorized by the licensee.

(d) *Compliance testing experimental radio stations.* The licensee shall ensure that transmissions are in conformance with the requirements in subpart G of this part and that the station is operated only by persons duly authorized by the licensee.

(e) *Broadcast experimental stations.* Except where unattended operation is specifically permitted, the licensee of each station authorized under the provisions of this part shall designate a person or persons to activate and control its transmitter. At the discretion of the station licensee, persons so designated may be employed for other duties and for operation of other transmitting stations if such other duties will not interfere with the proper operation of the station transmission systems.

§ 5.109 Responsibility for antenna structure painting and lighting.

Experimental Radio Service licensees may become responsible for maintaining the painting and lighting of any antenna structure they are authorized to use in accordance with part 17 of this chapter. *See* § 17.6 of this chapter.

§ 5.110 Power limitations.

(a) The transmitting radiated power for stations authorized under the Experimental Radio Service shall be limited to the minimum practical radiated power necessary for the success of the experiment.

(b) For broadcast experimental radio stations, the operating power shall not exceed by more than 5 percent the maximum power specified. Engineering standards have not been established for these stations. The efficiency factor for the last radio stage of transmitters employed will be subject to individual determination but shall be in general agreement with values normally employed for similar equipment operated within the frequency range authorized.

§ 5.111 Limitations on use.

(a) Stations may make only such transmissions as are necessary and directly related to the conduct of the licensee's stated program of experimentation and the related station instrument of authorization, and as governed by the provisions of the rules and regulations contained in this part. When transmitting, the licensee must use every precaution to ensure that it will not cause harmful interference to the services carried on by stations operating in accordance with the Table of Frequency Allocations of part 2 of this chapter.

(b) A licensee shall adhere to the program of experimentation as stated in its application or in the station instrument of authorization.

(c) The radiations of the transmitter shall be suspended immediately upon detection or notification of a deviation from the technical requirements of the station authorization until such deviation is corrected, except for transmissions concerning the immediate safety of life or property, in which case the transmissions shall be suspended as soon as the emergency is terminated.

§ 5.115 Station identification.

(a) *Conventional experimental radio licenses.* A licensee, unless specifically exempted by the terms of the station authorization, shall transmit its assigned call sign at the end of each complete transmission: Provided, however, that the transmission of the call sign at the end of each transmission is not required for projects requiring continuous, frequent, or extended use of the transmitting apparatus, if, during such periods and in connection with such use, the call sign is transmitted at least once every thirty minutes. The station identification shall be transmitted in clear voice or Morse code. All digital encoding and digital modulation shall be disabled during station identification.

(b) *Broadcast experimental licenses.* Each experimental broadcast station must transmit aural or visual announcements of its call letters and location at the beginning and end of each period of operation, and at least once every hour during operation.

(c) *Program experimental radio licenses.* Program experimental radio licenses shall comply with either paragraph (c)(1) or (c)(2):

(1) Stations may transmit identifying information sufficient to identify the license holder and the geographic coordinates of the station. This information shall be transmitted at the end of each complete transmission except that: this information is not required at the end of each transmission for projects requiring continuous, frequent, or extended use of the transmitting apparatus, if, during such periods and in connection with such use, the information is transmitted at least once every thirty minutes. The station identification shall be transmitted in clear voice or Morse code. All digital encoding and digital modulation shall be disabled during station identification; or

(2) Stations may post information sufficient to identify it on the Commission's program experimental registration Web site.

§ 5.121 Station record requirements.

(a) For conventional, program, medical testing, and compliance testing experimental radio stations, the current original authorization or a clearly legible photocopy for each station shall be retained as a permanent part of the station records, but need not be posted. Station records are required to be kept for a period of at least one year after license expiration.

(b) For Broadcast experimental radio stations, the license must be available at the transmitter site. The licensee of each experimental broadcast station must maintain and retain for a period of two years, adequate records of the operation, including:

(1) Information concerning the nature of the experimental operation and the periods in which it is being conducted; and

(2) Information concerning any specific data requested by the FCC.

§ 5.123 Inspection of stations.

All stations and records of stations in the authorized under this part shall be made available for inspection at any time while the station is in operation or shall be made available for inspection upon reasonable request of an authorized representative of the Commission.

§ 5.125 Authorized points of communication.

Generally, stations in the Experimental Radio Service may communicate only with other stations licensed in the Experimental Radio Service. Nevertheless, upon a satisfactory showing that the proposed communications are essential to the conduct of the research project, authority may be granted to communicate with stations in other services and U.S. Government stations.

Subpart D—Broadcast Experimental Licenses

§ 5.201 Applicable rules.

In addition to the rules in this subpart, broadcast experimental station applicants and licensees shall follow the rules in subparts B and C of this part. In case of any conflict between the rules set forth in this subpart and the rules set forth in subparts B and C of this part, the rules in this subpart shall govern.

§ 5.203 Experimental authorizations for licensed broadcast stations.

(a) Licensees of broadcast stations (including TV Translator, LPTV, and TV Booster stations) may obtain experimental authorizations to conduct technical experimentation directed toward improvement of the technical phases of operation and service, and for such purposes may use a signal other than the normal broadcast program signal.

(b) Experimental authorizations for licensed broadcast stations may be requested by filing an informal application with the FCC in Washington, DC, describing the nature and purpose of the experimentation to be conducted, the nature of the experimental signal to be transmitted, and the proposed schedule of hours and duration of the experimentation. Experimental authorizations shall be posted with the station license.

(c) Experimental operations for licensed broadcast stations are subject to the following conditions:

(1) The authorized power of the station may not be exceeded more than 5 percent above the maximum power specified, except as specifically authorized for the experimental operations.

(2) Emissions outside the authorized bandwidth must be attenuated to the degree required for the particular type of station.

(3) The experimental operations may be conducted at any time the licensed station is authorized to operate, but the minimum required schedule of programming for the class and type of station must be met. AM stations also may conduct experimental operations during the experimental period (12 midnight local time to local sunrise) and at additional hours if permitted by the experimental authorization provided no interference is caused to other stations maintaining a regular operating schedule within such period(s).

(4) If a licensed station's experimental authorization permits the use of additional facilities or hours of operation for experimental purposes, no sponsored programs or commercial announcements may be transmitted during such experimentation.

(5) The licensee may transmit regularly scheduled programming concurrently with the experimental transmission if there is no significant impairment of service.

(6) No charges may be made, either directly or indirectly, for the experimentation; however, normal charges may be made for regularly scheduled programming transmitted concurrently with the experimental transmissions.

(d) The FCC may request a report of the research, experimentation and results at the conclusion of the experimental operation.

§ 5.205 Licensing requirements, necessary showing.

(a) An applicant for a new experimental broadcast station, change in facilities of any existing station, or modification of license is required to make a satisfactory showing of compliance with the general requirements of the Communications Act of 1934, as amended, as well as the following:

(1) That the applicant has a definite program of research and experimentation in the technical phases of broadcasting which indicates reasonable promise of substantial contribution to the developments of the broadcasting art.

(2) That upon the authorization of the proposed station the applicant can and will proceed immediately with its program of research and experimentation.

(3) That the transmission of signals by radio is essential to the proposed program of research and experimentation.

(4) That the program of research and experimentation will be conducted by qualified personnel.

(b) A license for an experimental broadcast station will be issued only on the condition that no objectionable interference to the regular program transmissions of broadcast stations will result from the transmissions of the experimental stations.

(c) *Special provision for broadcast experimental radio station applications.* For purposes of the definition of ''experimental authorization'' in Section II.A.6 of the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process set forth in Appendix C to Part 1 of this chapter, an Broadcast Experimental Radio Station authorized under this Subpart shall be considered an ''Experimental Broadcast Station authorized under part 74 of the Commission's Rules.''

§ 5.207 Supplemental reports with application for renewal of license.

A report shall be filed with each application for renewal of experimental broadcast station license which shall include a statement of each of the following:

(a) Number of hours operated.

(b) Full data on research and experimentation conducted including the types of transmitting and studio equipment used and their mode of operation.

(c) Data on expense of research and operation during the period covered.

(d) Power employed, field intensity measurements and visual and aural

observations and the types of instruments and receivers utilized to determine the station service area and the efficiency of the respective types of transmissions.

(e) Estimated degree of public participation in reception and the results of observations as to the effectiveness of types of transmission.

(f) Conclusions, tentative and final.

(g) Program of further developments in broadcasting.

(h) All developments and major changes in equipment.

(i) Any other pertinent developments.

§ 5.211 Frequency monitors and measurements.

The licensee of a broadcast experimental radio station shall provide the necessary means for determining that the frequency of the station is within the allowed tolerance. The date and time of each frequency check, the frequency as measured, and a description or identification of the method employed shall be entered in the station log. Sufficient observations shall be made to insure that the assigned carrier frequency is maintained within the prescribed tolerance.

§ 5.213 Time of operation.

(a) Unless specified or restricted hours of operation are shown in the station authorization, broadcast experimental radio stations may be operated at any time and are not required to adhere to a regular schedule of operation.

(b) The FCC may limit or restrict the periods of station operation in the event interference is caused to other broadcast or non-broadcast stations.

(c) The FCC may require that a broadcast experimental radio station conduct such experiments as are deemed desirable and reasonable for development of the type of service for which the station was authorized.

§ 5.215 Program service and charges.

(a) The licensee of a broadcast experimental radio station may transmit program material only when necessary to the experiments being conducted, and no regular program service may be broadcast unless specifically authorized.

(b) The licensee of a broadcast experimental radio station may make no charges nor ask for any payment, directly or indirectly, for the production or transmission of any programming or information used for experimental broadcast purposes.

§ 5.217 Rebroadcasts.

(a) The term *rebroadcast* means reception by radio of the programs or other transmissions of a broadcast station, and the simultaneous or subsequent retransmission of such programs or transmissions by a broadcast station.

(1) As used in this section, the word ''program'' includes any complete program or part thereof.

(2) The transmission of a program from its point of origin to a broadcast station entirely by common carrier facilities, whether by wire line or radio, is not considered a rebroadcast.

(3) The broadcasting of a program relayed by a remote broadcast pickup station is not considered a rebroadcast.

(b) No licensee of a broadcast experimental radio station may retransmit the program of another U.S. broadcast station without the express authority of the originating station. A copy of the written consent of the licensee originating the program must be kept by the licensee of the broadcast experimental radio station retransmitting such program and made available to the FCC upon request.

§ 5.219 Broadcasting emergency information.

(a) In an emergency where normal communication facilities have been disrupted or destroyed by storms, floods or other disasters, a broadcast experimental radio station may be operated for the purpose of transmitting essential communications intended to alleviate distress, dispatch aid, assist in rescue operations, maintain order, or otherwise promote the safety of life and property. In the course of such operation, a station of any class may communicate with stations of other classes and in other services. However, such operation shall be conducted only on the frequency or frequencies for which the station is licensed and the used power shall not exceed the maximum authorized in the station license. When such operation involves the use of frequencies shared with other stations, licensees are expected to cooperate fully to avoid unnecessary or disruptive interference.

(b) Whenever such operation involves communications of a nature other than those for which the station is licensed to perform, the licensee shall, at the earliest practicable time, notify the FCC in Washington, DC of the nature of the emergency and the use to which the station is being put and shall subsequently notify the same offices when the emergency operation has been terminated.

(c) Emergency operation undertaken pursuant to the provisions of this section shall be discontinued as soon as substantially normal communications facilities have been restored. The Commission may at any time order discontinuance of such operation.

Subpart E—Program Experimental Radio Licenses

§ 5.301 Applicable rules.

In addition to the rules in this subpart, program experimental applicants and licensees must follow the rules in subparts B and C of this part. In case of any conflict between the rules set forth in this subpart and the rules set forth in subparts B and C of this part, the rules in this subpart shall govern.

§ 5.302 Eligibility.

Program experimental licensees may be granted to the following entities: a college or university with a graduate research program in engineering that is accredited by the Accreditation Board for Engineering and Technology (ABET); a research laboratory; a hospital or health care institution; a manufacturer of radio frequency equipment; or a manufacturer that integrates radio frequency equipment into their end products. Each applicant must meet the following requirements:

(a) The radiofrequency experimentation will be conducted in a defined geographic area under the applicant's control;

(b) The applicant has institutional processes to monitor and effectively manage a wide variety of research projects; and

(c) The applicant has demonstrated expertise in radio spectrum management or partner with another entity that has such expertise.

§ 5.303 Frequencies.

Licensees may operate in any frequency band, except for frequency bands exclusively designated as restricted in § 15.205(a) of this chapter with the additional exception that program licensees are permitted to operate in frequency bands above 38.6 GHz, unless these bands are listed in footnote US246 of the Table of Frequency Allocations.

§ 5.304 Area of operations.

Applications must specify, and the Commission will grant authorizations for, a geographic area that is inclusive of an institution's real-property facilities where the experimentation will be conducted and that is under the applicant's control. If an applicant wants to conduct experiments in more than one defined geographic area, it shall apply for a license for each location.

§ 5.305 Program license not permitted.

Experiments are not permitted under this subpart and a conventional experimental radio license is required when:

(a) An environmental assessment must be filed with the Commission as required by § 5.63(a), or

(b) An orbital debris mitigation plan must be filed with the Commission as required by § 5.64, or

(c) The applicant requires non-disclosure of proprietary information as part of its justification for its license application; or

(d) A product development or a market trial is to be conducted.

§ 5.307 Responsible party.

(a) Each program experimental radio applicant must identify a single point of contact responsible for all experiments conducted under the license, including

(1) Ensuring compliance with the notification requirements of § 5.309 of this part; and

(2) Ensuring compliance with all applicable FCC rules.

(b) The responsible individual will serve as the initial point of contact for all matters involving interference resolution and must have the authority to discontinue any and all experiments being conducted under the license, if necessary.

(c) The license application must include the name of the responsible individual and contact information at which the person can be reached at any time of the day; this information will be listed on the license. Licensees are required to keep this information current.

§ 5.308 Stop buzzer.

A ''Stop Buzzer'' point of contact must be identified and available at all times during operation of each experiment conducted under a program license. A ''stop buzzer'' point of contact is a person who can address interference concerns and cease all transmissions immediately if interference occurs.

§ 5.309 Notification requirements.

(a) At least ten calendar days prior to commencement of any experiment, program experimental licensees must provide the following information to the Commission's program experimental registration Web site.

(1) A narrative statement describing the experiment, including a description and explanation of measures taken to avoid causing harmful interference to any existing service licensee;

(2) Contact information for the researcher-in-charge of the described experiment;

(3) Contact information for a ''stop buzzer''; and

(4) Technical details including:

(i) The frequency or frequency bands;

(ii) The maximum equivalent isotropically radiated power (EIRP) or effective radiated power (ERP) under consideration;

(iii) The emission designators to be used;

(iv) A description of the geographic area in which the test will be conducted;

(v) The number of units to be used; and

(vi) A mitigation plan as required by § 5.311, if necessary.

(5) For program license experiments that may affect frequency bands used for the provision of commercial mobile services, emergency notifications, or public safety purposes, a list of those critical service licensees that are authorized to operate in the same bands and geographic area of the planned experiment.

(b) Experiments may commence without specific approval or authorization once ten calendar days have elapsed from the time of posting to the above Web site. During that ten-day period, the licensee of an authorized service may contact the program licensee to resolve any objections to an experiment. It is expected that parties will work in good faith to resolve such objections, including modifying experiments if necessary to reach an agreeable resolution. However, only the Commission has the authority to prevent a program licensee from beginning operations (or to order the cessation of operations). Therefore, if an incumbent licensee believes that it will suffer interference (or in fact, has experienced interference), it must bring its concerns to the Commission for action. In such an event, the Commission will evaluate the concerns, and determine whether a planned experiment should be permitted to commence as proposed (or be terminated, if the experiment has commenced).

(c) The Commission can prohibit or require modification of specific experiments under a program experimental radio license at any time without notice or hearing if in its discretion the need for such action arises.

(d) Within 30 days after completion of each experiment conducted under a program experimental radio license, the licensee shall file a narrative statement describing the results of the experiment, including any interference incidents and steps taken to resolve them. This narrative statement must be filed to the Commission's program experimental registration Web site and be associated with the materials described in paragraphs (a) and (b) of this section.

(e)(1) The Commission may ask licensees for additional information to resolve an interference incident, gain a better understanding of new technology development, or for auditing purposes to ensure that licensees are actually conducting experiments. Failure to comply with a Commission request for additional information under this section, or if, upon review of such information, the Commission determines that a licensee is not actually conducting experimentation, could result in forfeiture of the program license and loss of privilege of obtaining such a license in the future.

(2) All information submitted pursuant to this section will be treated as routinely available for publicly inspection, within the meaning of § 0.459 of this chapter. Licensees are permitted to request that information requested by the Commission pursuant to this section be withheld from public inspection. The Commission will consider such requests pursuant to the procedures set forth in § 0.459 of this chapter.

§ 5.311 Additional requirements related to safety of the public.

In addition to the notification requirements of § 5.309, for experiments that may affect frequency bands used for the provision of commercial mobile services, emergency notifications, or public safety purposes, the program experimental radio licensee shall, prior to commencing transmissions, develop a specific plan to avoid interference to these bands. The plan must include provisions for:

(a) Providing notice to parties, including other Commission licensees that are authorized to operate in the same bands and geographic area as the planned experiment and, as appropriate, their end users;

(b) Rapid identification, and elimination, of any harm the experiment may cause; and

(c) Identifying an alternate means for accomplishing potentially-affected vital public safety functions during the experiment.

§ 5.313 Innovation zones.

(a) An innovation zone is a specified geographic location with pre-authorized boundary conditions (such as frequency band, maximum power, etc.) created by the Commission on its own motion or in response to a request from the public. Innovation zones will be announced via public notice and posted on the

Commission's program experimental registration Web site.

(b) A program experimental licensee may conduct experiments in an innovation zone consistent with the specified boundary conditions without specific authorization from the Commission. All licensees operating under this authority must comply with the requirements and limitations set forth for program licensees in this part, including providing notification of its intended operations on the program experimental registration Web site prior to operation.

Subpart F—Medical Testing Experimental Radio Licenses

§ 5.401 Applicable rules.

In addition to the rules in this subpart, medical testing experimental applicants and licensees must follow the rules in subparts B and C of this part. In case of any conflict between the rules set forth in this subpart and the rules set forth in subparts B and C of this part, the rules in this subpart shall govern.

§ 5.402 Eligibility and usage.

(a) Eligibility for medical testing licenses is limited to health care facilities as defined in § 95.1103(b) of this chapter.

(b) Medical testing experimental radio licenses are for testing in clinical trials medical devices that use RF wireless technology for diagnosis, treatment, or patient monitoring for the purposes of, but not limited to, assessing patient compatibility and usage issues, as well as operational, interference, and RF immunity issues. Medical testing is limited to testing equipment designed to comply with the rules in part 15, Radio Frequency Devices; part 18, Industrial, Scientific, and Medical Equipment; part 95, Personal Radio Services subpart H—Wireless Medical Telemetry Service; or part 95, subpart I—Medical Device Radiocommunication Service.

§ 5.403 Frequencies.

(a) Licensees may operate in any frequency band, including those above 38.6 GHz, except for frequency bands exclusively allocated to the passive services (including the radio astronomy service). In addition, licensees may not use any frequency or frequency band below 38.6 GHz that is listed in § 15.205(a) of this chapter.

(b) Exception: Licensees may use frequencies listed in § 15.205(a) of this chapter if the device under test is designed to comply with all applicable service rules in part 18, Industrial, Scientific, and Medical Equipment; part 95, Personal Radio Services subpart H—Wireless Medical Telemetry Service; or part 95, subpart I—Medical Device Radiocommunication Service.

§ 5.404 Area of operation.

Applications must specify, and the Commission will grant authorizations for, a geographic area that is inclusive of an institution's real-property facilities where the experimentation will be conducted and that is under the applicant's control. Applications also may specify, and the Commission will grant authorizations for, defined geographic areas beyond the institution's real-property facilities that will be included in clinical trials and monitored by the licensee. In general, operations will be permitted where the likelihood of harmful interference being caused to authorized services is minimal.

§ 5.405 Yearly report.

Medical testing licensees must file a yearly report detailing the activity that has been performed under the license. This report is to be filed electronically to the Commission's program experimental registration Web site and must, at a minimum, include:

(a) A list of each test performed and the testing period; and

(b) A Description of each test, including equipment tested; and

(c) The results of the test including any interference incidents and their resolution.

§ 5.406 Responsible party, ''stop-buzzer,'' and notification requirements, and additional requirements related to safety of the public.

(a) Medical testing licensees must identify a single point of contact responsible for all experiments conducted under the license and must also identify a ''stop buzzer'' point of contact for all experiments, consistent with subpart E, §§ 5.307 and 5.308.

(b) Medical testing licensees must meet the notification and safety of the public requirements of subpart E, §§ 5.309 and 5.311.

§ 5.407 Exemption from station identification requirement.

Medical testing experimental licensees are exempt from complying with the station identification requirements of § 5.115.

Subpart G—Compliance Testing Experimental Radio Licenses

§ 5.501 Applicable rules.

In addition to the rules in this subpart, compliance testing experimental applicants and licensees must follow the rules in subparts B and C of this part. In case of any conflict between the rules set forth in this subpart and the rules set forth in subparts B and C of this part, the rules in this subpart shall govern.

§ 5.502 Eligibility.

Compliance testing experimental radio licenses may be granted to those testing laboratories recognized by the FCC as being competent to perform measurements of equipment for equipment authorization.

§ 5.503 Scope of testing activities.

The authority of a compliance testing experimental license is limited to only those testing activities necessary for device certification (including antenna calibration, test site validation, proficiency testing, and testing in an Open Area Test Site); *i.e.,* compliance testing experimental licensees are not authorized to conduct immunity testing.

§ 5.504 Responsible party.

Compliance testing licensees must identify a single point of contact responsible for all experiments conducted under the license, including ensuring compliance with all applicable FCC rules:

(a) The responsible individual will serve as the initial point of contact for all matters involving interference resolution and must have the authority to discontinue any and all experiments being conducted under the license, if necessary.

(b) The name of the responsible individual, along with contact information, such as a phone number and email address at which he or she can be reached at any time of the day, must be identified on the license application, and this information will be listed on the license. Licensees are required to keep this information current.

§ 5.505 Exemption from station identification requirement.

Compliance testing experimental licensees are exempt from complying with the station identification requirements of § 5.115.

Subpart H—Product Development and Market Trials

§ 5.601 Product development trials.

Unless otherwise stated in the instrument of authorization, experimental radio licenses granted for the purpose of product development trials pursuant to § 5.3(k) are subject to the following conditions:

(a) All transmitting and/or receiving equipment used in the study shall be owned by the licensee.

(b) The licensee is responsible for informing all participants in the experiment that the operation of the service or device is being conducted under an experimental authorization and is strictly temporary.

(c) Marketing of devices (as defined in § 2.803 of this chapter) or provision of services for hire is not permitted.

(d) The size and scope of the experiment are subject to such limitations as the Commission may establish on a case-by-case basis. If the Commission subsequently determines that a product development trial is not so limited, the trial shall be immediately terminated.

(e) Broadcast experimental station applicants and licensees must also meet the requirements of § 5.205.

§ 5.602 Market trials.

Unless otherwise stated in the instrument of authorization, experimental radio licenses granted for the purpose of market trials pursuant to § 5.3(k) are subject to the following conditions:

(a) Marketing of devices (as defined in § 2.803 of this chapter) and provision of services for hire is permitted before the radio frequency device has been authorized by the Commission, subject to the ownership provisions in paragraph (d) of this section and provided that the device will be operated in compliance with existing Commission rules, waivers of such rules that are in effect at the time of operation, or rules that have been adopted by the Commission but that have not yet become effective.

(b) The operation of all radio frequency devices that are included in a market trial must be authorized under this rule section, including those devices that are designed to operate under parts 15, 18, or 95 of this chapter.

(c) If more than one entity will be responsible for conducting the same market trial *e.g.,* manufacturer and service provider, each entity will be authorized under a separate license. If more than one licensee is authorized, the licensees or the Commission shall designate one as the responsible party for the trial.

(d) All transmitting and/or receiving equipment used in the study shall be owned by the experimental licensees. Marketing of devices is only permitted as follows:

(1) The licensees may sell equipment to each other, *e.g.,* manufacturer to service provider,

(2) The licensees may lease equipment to trial participants for purposes of the study, and

(3) The number of devices to be marketed shall be the minimum quantity of devices necessary to conduct the market trial as approved by the Commission.

(e) Licensees are required to ensure that trial devices are either rendered inoperable or retrieved by them from trial participants at the conclusion of the trial. Licensees are required to notify trial participants in advance that operation of the trial device is subject to this condition.

(f) The size and scope of the experiment are subject to limitations as the Commission shall establish on a case-by-case basis. If the Commission subsequently determines that a market trial is not so limited, the trial shall be immediately terminated.

(g) Broadcast experimental station applicants and licensees must also meet the requirements of § 5.205.

PART 22—PUBLIC MOBILE SERVICES

■ 16. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

§ 22.165 [Amended]

■ 17. Section 22.165 is amended by removing and reserving paragraph (d)(2).

■ 18. Section 22.377 is revised to read as follows:

§ 22.377 Certification of transmitters.

Transmitters used in the Public Mobile Services, including those used with signal boosters, in-building radiation systems and cellular repeaters, must be certificated for use in the radio services regulated under this part. Transmitters must be certificated when the station is ready for service, not necessarily at the time of filing an application. The FCC may list as certificated only transmitters that are capable of meeting all technical requirements of the rules governing the service in which they will operate. The procedure for obtaining certification is set forth in part 2 of this chapter.

Subpart D [Removed and Reserved]

■ 19. Subpart D (consisting of §§ 22.401 through 22.413) is removed and reserved.

■ 20. Section 22.591 is amended by revising paragraph (a) to read as follows:

§ 22.591 Channels for point-to-point operation.

* * * * *

(a) The 72–76 MHz channels may be used in point-to-multipoint configurations. The 72–76 MHz channels are also allocated for assignment in the Private Radio Services (see part 90 of this chapter).

* * * * *

§ 22.599 [Removed]

■ 21. Section 22.599 is removed.

PART 73—RADIO BROADCAST SERVICES

■ 22. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.1510 [Removed]

■ 23. Section 73.1510 is removed.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 24. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 309, 336 and 554.

■ 25. Section 74.1 is revised to read as follows:

§ 74.1 Scope.

(a) The rules in this subpart are applicable to the Auxiliary and Special Broadcast and Other Program Distributional Services.

(b) Rules in part 74 which apply exclusively to a particular service are contained in that service subpart, as follows: Remote Pickup Broadcast Stations, subpart D; Aural Broadcast STL and Intercity Relay Stations, subpart E; TV Auxiliary Broadcast Stations, subpart F; Low-power TV, TV Translator and TV Booster Stations, subpart G; Low-power Auxiliary Stations, subpart H; FM Broadcast Translator Stations and FM Broadcast Booster Stations, subpart L.

■ 26. Section 74.5 is amended by revising the introductory text to read as follows:

§ 74.5 Cross reference to rules in other parts.

Certain rules applicable to Auxiliary, Special Broadcast and other Program Distribution services, some of which are also applicable to other services, are set forth in the following parts of the FCC Rules and Regulations:

* * * * *

■ 27. Section 74.15 is amended by removing and reserving paragraph (a) and revising paragraph (f) to read as follows:

§ 74.15 Station license period.

* * * * *

(f) The license of an FM translator or FM broadcast booster, TV translator or TV broadcast booster, or low power TV station will expire as a matter of law upon failure to transmit broadcast signals for any consecutive 12-month period notwithstanding any provision, term, or condition of the license to the contrary. Further, if the license of any AM, FM, or TV broadcasting station licensed under part 73 of this chapter expires for failure to transmit signals for any consecutive 12-month period, the licensee's authorizations under part 74, subparts D, E, F, and H in connection with the operation of that AM, FM, or TV broadcasting station will also expire notwithstanding any provision, term, or condition to the contrary.

■ 28. Section 74.16 is revised to read as follows:

§ 74.16 Temporary extension of station licenses.

Where there is pending before the Commission any application, investigation, or proceeding which, after hearing, might lead to or make necessary the modification of, revocation of, or the refusal to renew an existing auxiliary broadcast station license or a television broadcast translator station license, the Commission in its discretion, may grant a temporary extension of such license: *Provided, however,* That no such temporary extension shall be construed as a finding by the Commission that the operation of any radio station thereunder will serve public interest, convenience, and necessity beyond the express terms of such temporary extension of license: *And provided further,* That such temporary extension of license will in no wise affect or limit the action of the Commission with respect to any pending application or proceeding.

■ 29. Section 74.28 is revised to read as follows:

§ 74.28 Additional orders.

In case the rules contained in this part do not cover all phases of operation with respect to external effects, the FCC may make supplemental or additional orders in each case as may be deemed necessary.

Subpart A [Removed and Reserved]

■ 30. Subpart A (consisting of §§ 74.101 through 74.184) is removed and reserved.

§ 74.780 [Amended]

■ 31. Section 74.780 is amended by adding an entry for ''Part 5—Experimental authorizations'' in numerical order and removing the entry for ''Section 73.1510—Experimental authorizations.''

PART 80—STATIONS IN THE MARITIME SERVICES

■ 32. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 307(e), 309, and 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, 307(e), 309, and 332, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 3450, 3 UST 4726, 12 UST 2377.

§ 80.25 [Amended]

■ 33. Section 80.25 is amended by removing paragraph (c).

§ 80.33 [Removed]

■ 34. Section 80.33 is removed.

§ 80.203 [Amended]

■ 35. Section 80.203 is amended by removing and reserving paragraph (j).

§ 80.211 [Amended]

■ 36. Section 80.211 is amended by removing paragraph (g).

■ 37. Section 80.377 is revised to read as follows:

§ 80.377 Frequencies for ship earth stations.

The frequency band 1626.5–1645.5 MHz is assignable for communication operations and radiodetermination and telecommand messages that are associated with the position, orientation and operational functions of maritime satellite equipment. The frequency band 1645.5–1646.5 MHz is reserved for use in the Global Maritime Distress and Safety System (GMDSS).

§ 80.391 [Removed]

■ 38. Section 80.391 is removed.

PART 87—AVIATION SERVICES

■ 39. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

■ 40. Section 87.27 is revised to read as follows:

§ 87.27 License term.

Licenses for stations in the aviation services will normally be issued for a term of ten years from the date of original issuance, or renewal.

§ 87.37 [Removed]

■ 41. Section 87.37 is removed.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 42. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

§ 90.7 [Amended]

■ 43. Section 90.7 is amended by removing the definition ''Developmental Operation.''

§ 90.20 [Amended]

■ 44. Section 90.20 is amended by removing and reserving paragraph (e)(3).

§ 90.35 [Amended]

■ 45. Section 90.35 is amended by removing the entry for ''8,400 to 8,500'' from the table in paragraph (b)(3) and by removing and reserving paragraphs (c)(75), (d)(6) and (e)(2).

§ 90.129 [Amended]

■ 46. Section 90.129 is amended by removing and reserving paragraph (f).

§ 90.149 [Amended]

■ 47. Section 90.149 is amended by removing paragraph (c).

§ 90.175 [Amended]

■ 48. Section 90.175 is amended by removing and reserving paragraph (j)(4).

§ 90.203 [Amended]

■ 49. Section 90.203 is amended by removing and reserving paragraph (b)(1).

§ 90.241 [Amended]

■ 50. Section 90.241 is amended by removing paragraph (e).

■ 51. Section 90.250 is amended by revising paragraph (i) to read as follows:

§ 90.250 Meteor burst communications.

* * * * *

(i) Stations employing meteor burst communications must not cause interference to other stations operating in accordance with the allocation table. New authorizations will be issued subject to the Commission's experimental licensing rules in part 5 of this chapter. Prior to expiration of the experimental authorization, application Form 601 should be filed for issuance of a permanent authorization.

Subpart Q [Removed and Reserved]

■ 52. Subpart Q (consisting of §§ 90.501 through 90.517) is removed and reserved.

PART 101—FIXED MICROWAVE SERVICES

■ 53. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 101.21 [Amended]

■ 54. Section 101.21 is amended by removing and reserving paragraph (b).

■ 55. Section 101.129 is amended by revising paragraph (a) to read as follows:

§ 101.129 Transmitter location.

(a) The applicant must determine, prior to filing an application for a radio station authorization, that the antenna site specified therein is adequate to render the service proposed. In cases of questionable antenna locations, it is desirable to conduct propagation tests to indicate the field intensity which may be expected in the principal areas or at the fixed points of communication to be served, particularly where severe shadow problems may be expected. In considering applications proposing the use of such locations, the Commission may require site survey tests to be made pursuant to an experimental license under part 5 of this chapter. In such cases, propagation tests should be conducted in accordance with recognized engineering methods and should be made with a transmitting antenna simulating, as near as possible, the proposed antenna installation. Full data obtained from such surveys and its analysis, including a description of the methods used and the name, address and qualifications of the engineer making the survey, must be supplied to the Commission.

* * * * *

Subpart F [Removed and Reserved]

■ 56. Subpart F (consisting of §§ 101.401 through 101.413) is removed and reserved.

[FR Doc. 2013–08528 Filed 4–26–13; 8:45 am]

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No. 82 April 29, 2013

Part III

The President

Proclamation 8963—Honoring the Victims of the Explosion in West, Texas

Federal Register
Vol. 78, No. 82
Monday, April 29, 2013

Presidential Documents

Title 3—

The President

Proclamation 8963 of April 24, 2013

Honoring the Victims of the Explosion in West, Texas

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of those who perished in the explosion in West, Texas, on April 17, 2013, I hereby order, by the authority vested in me by the Constitution and the laws of the United States of America, that the flag of the United States shall be flown at half-staff at all public buildings and grounds and at all military facilities and naval stations of the Federal Government in the State of Texas on April 25, 2013.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of April, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

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Federal Register

Vol. 78, No. 82

Monday, April 29, 2013

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Presidential Documents	
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The United States Government Manual	**741–6000**
Other Services	
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Public Laws Update Service (numbers, dates, etc.)	**741–6043**
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FEDERAL REGISTER PAGES AND DATE, APRIL

19393–19584 1
19585–19978 2
19979–20212 3
20213–20408 4
20409–20782 5
20783–21014 8
21015–21210 9
21211–21502 10
21503–21816 11
21817–22150 12
22151–22410 15
22411–22766 16
22767–23104 17
23105–23456 18
23457–23670 19
23671–23828 22
23829–24032 23
24033–24326 24
24327–24664 25
24665–24978 26
24979–25180 29

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

Proposed Rules:
1329 23699

3 CFR

Proclamations:
8948 20213
8949 20215
8950 20217
8951 20219
8952 20221
8953 20223
8954 20409
8955 21813
8956 21815
8957 23103
8958 23669
8959 24319
8960 24321
8961 24323
8962 24325
8963 25179

Executive Orders:
13635 (superseded by 13641) 21503
13639 19979
13640 21211
13641 21503

Administrative Orders:
Order of April 10, 2013 22409
Memorandums:
Memo. of May 31, 2011 (revoked by Memo. of March 29, 2013) 20225
Memo. of March 29, 2013 20225
Memo. of April 5, 2013 21213
Memorandum of April 5, 2013 22763
Presidential Determinations:
No. 2013–07 of April 8, 2013 22765
No. 2013–8 of April 19, 2013 24317

5 CFR

532 21515
1201 ..... 21517, 23457
1208 23457
9601 22767

Proposed Rules:
733 20497
950 20820

7 CFR

272 20411
301 24665
319 24666
457 22411
800 22151
905 24327
906 24329
922 ..... 21518, 24331
923 21520
927 ..... 21521, 24033, 24036
929 24333
932 24979
946 24981
948 23829
959 23671
985 23673
987 24983
1000 ..... 24334, 24668
1001 24668
1005 24668
1006 24668
1007 24668
1030 24668
1032 24668
1033 24668
1124 24668
1126 24668
1131 24668
1437 21015
3201 ..... 19393, 20783

Proposed Rules:
319 24634
340 24634
985 22202
4280 22044

8 CFR

103 22770
208 22770
214 24047
1003 24669
1292 ..... 19400, 24669

9 CFR

94 24670

10 CFR

72 22411
430 21215
431 23336

Proposed Rules:
2 20498
26 22209
50 21275
52 21275
73 ..... 21567, 23684
429 ..... 19606, 20832, 22431
430 ..... 19606, 20502, 20832, 20842
431 20503

12 CFR

622 24336
240 21019
242 20756
272 19981

Ch. III.....22771
615.....21035, 23438
621.....21035
652.....21035
Ch. X.....21218

Proposed Rules:
246.....23162
1026.....23171
Ch. XII.....23507

13 CFR

Proposed Rules:
39.....23866
Ch. III.....22801

14 CFR

25.....19981, 21037
33.....19982
39 .....19983, 20227, 20229, 20234, 21227, 21230, 21233, 21236, 22166, 22168, 22170, 22172, 22175, 22178, 22180, 22182, 22185, 23105, 23107, 23110, 23112, 23114, 23458, 23462, 23465, 23468, 23830, 24037, 24041, 24338, 24340, 24343, 24671, 24673, 24985
71 .....19985, 21043, 21044, 22189, 22190, 22413, 22414, 22415, 22416, 22417, 24346
73.....21817, 24985
95.....20783
97.....21239, 21242
1209.....20422

Proposed Rules:
39 .....19628, 20503, 20505, 20507, 20509, 20844, 21072, 21074, 21077, 21079, 21082, 21276, 21279, 21569, 21571, 21573, 21576, 21578, 21854, 22209, 22213, 22215, 22432, 22435, 22439, 22802, 22806, 23685, 23686, 23688, 23690, 23691, 23692, 23694, 23696, 23698, 24363, 24367, 24368, 24371, 24689
71 .....20846, 21084, 21856, 25005, 25006
121.....19630

15 CFR

730.....22660
732.....22660
734.....22660
736.....22660
738.....22660
740.....22660
742.....22660
743.....22660
744.....22660
746.....22660
748.....22660, 23472
750.....22660
756.....22660
758.....22660
762.....22660
764.....22660
770.....22660
772.....22660
774.....22660
902.....22950

Proposed Rules:
29.....23699

16 CFR

309.....23832

Proposed Rules:
1112.....20511
1226.....20511

17 CFR

1.....21045, 22418
3.....20788, 22418
5.....22418
9.....22418
11.....22418
23.....20788, 21045
31.....22418
40.....22418
41.....22418
50.....21750
140.....21522, 22418
145.....22418
162.....23638
170.....22418
171.....22418
190.....22418
240.....21046
248.....23638
249.....21046

Proposed Rules:
23.....20848

18 CFR

40.....22773
154.....19409
376.....21245

Proposed Rules:
40.....24101, 24107

19 CFR

201.....23474
210.....23474
351.....21246, 22773

20 CFR

655.....24047

Proposed Rules:
638.....19632
670.....19632

21 CFR

73.....19413
510.....19986, 21058
520.....21058
522.....19986, 21058
524.....21058
526.....21058
529.....21058
558.....19986, 21058
600.....19585
1308.....21818

Proposed Rules:
Ch. I.....21085
1.....24691
16.....24691, 24692
106.....24691
107.....22442
110.....24691
112.....24692
114.....24691
117.....24691, 24693
120.....24691
123.....24691
129.....24691
179.....24691
211.....24691
660.....23508
801.....23508
809.....23508
876.....20268
882.....20268
892.....20268
1308.....21858

22 CFR

120.....21523, 22740
121.....22740
123.....22740
126.....21523

23 CFR

Proposed Rules:
771.....20074

24 CFR

Proposed Rules:
5.....23178
202.....23178

25 CFR

518.....20236
547.....24061
558.....21826
581.....21060
584.....21060
585.....21060

Proposed Rules:
170.....21861

26 CFR

1.....23116, 23487
602.....23116

Proposed Rules:
1 .....19950, 20523, 23183
53.....20523

27 CFR

447.....23675

Proposed Rules:
9.....20544

28 CFR

811.....23835

Proposed Rules:
0.....21862

29 CFR

1926.....23837
4022.....22192

Proposed Rules:
15.....19632
4000.....20039
4001.....20039
4043.....20039
4204.....20039
4206.....20039
4231.....20039

30 CFR

48.....23134
250.....20423
1206.....20244

Proposed Rules:
701.....20394, 22451
736.....20394, 22451
737.....20394, 22451
738.....20394, 22451
750.....20394, 22451
1206.....25008

31 CFR

Proposed Rules:
1010.....24576, 24584

32 CFR

103.....20443
105.....21716
182.....21826
226.....21256
706.....22421

Proposed Rules:
60.....24694
329.....24124

33 CFR

100 .....21258, 22193, 22777, 23843, 24063, 24065
117 .....19415, 19585, 20451, 21063, 21064, 21537, 21839, 22423, 23134, 23487, 23488, 23489, 23845, 23846, 23847, 24676
162.....23849
165 .....19988, 20454, 20792, 21260, 22195, 22778, 23135, 23489, 23849, 23850, 24068, 24069, 24071, 24677, 24679, 24987

Proposed Rules:
100 .....19632, 20066, 20277, 20849, 21864, 22808, 22811, 22814
101 .....20289, 20558, 22218
104 .....20289, 20558, 22218
105 .....20289, 20558, 22218
106 .....20289, 20558, 22218
162.....24697
165 .....19431, 20277, 20559, 20852, 23515, 23519, 23866, 23869, 25008

34 CFR

Ch. III.....22780, 22783

Proposed Rules:
Ch. II.....22452
Ch. III.....20069, 22817
Ch. VI.....22467

36 CFR

219.....23491

Proposed Rules:
7.....22470
294.....23522
1195.....23872
1280.....20563

37 CFR

1.....19416, 20180
2.....20180
7.....20180
10.....20180
11.....20180
41.....20180
382.....23054

Proposed Rules:
1.....21788
3.....21788

38 CFR

17.....19586
59.....21262

Proposed Rules:
17.....22219, 23702

39 CFR

111.....23137

Proposed Rules:
111.....24132
3001.....22820
3010.....22490

40 CFR

51 23149
52 ..... 19421, 19596, 19599, 19602, 19990, 19991, 19994, 19998, 20001, 20244, 20793, 21065, 21537, 21540, 21542, 21545, 21547, 21841, 22197, 22198, 22423, 22785, 23492, 23495, 23677, 24347, 24990, 24992
60 24094
62 21846
63 ..... 20246, 23497, 24094
70 19602
80 22788
81 ..... 20001, 21547, 22425
82 ..... 20004, 24997
98 ..... 19605, 23149
131 20252
180 ..... 20029, 20032, 20461, 21267, 22789, 23497, 24094, 24349, 24682
239 20035
258 20035

Proposed Rules:

52 ..... 19434, 19636, 20290, 20855, 20856, 20868, 21281, 21296, 21302, 21580, 21581, 21582, 21583, 21867, 22827, 22840, 23524, 23527, 23704, 24373, 24700, 25011
60 22126
62 21871
63 22370
70 19636
80 20881
81 ..... 20856, 20868, 21583, 22501
82 21871
98 ..... 19802, 24378
239 20073
258 20073
300 24134
450 19434
721 23184

42 CFR

68 20466
88 22794
433 19918

Proposed Rules:

405 25013
411 21308
420 25013
424 25013
488 20564
489 20564
498 25013
1001 21314

44 CFR

67 ..... 22221, 22222

Proposed Rules:

67 ..... 22221, 22222

45 CFR

60 20473
61 20473

Proposed Rules:

155 20581
160 23872
164 23872
1184 22501

47 CFR

0 ..... 23150, 25138
1 ..... 19424, 21555, 23150, 25138
2 ..... 21555, 25138
5 25138
13 23150
20 21555
22 ..... 19424, 21555, 25138
24 ..... 19424, 21555
27 ..... 19424, 21555
54 ..... 20796, 22198
69 24683
73 ..... 21565, 21849, 23854, 25138
74 25138
76 20255
80 ..... 23150, 25138
87 ..... 23150, 25138
90 ..... 19424, 21555, 23855, 25138
101 25138

Proposed Rules:

Ch. I 21879
1 24138
2 24138
15 21320
20 19442
27 24138
54 ..... 23192, 23877, 24147
64 21891
73 21337
90 ..... 23529, 24138

48 CFR

215 21850
235 21850
237 21850
1552 22795

Proposed Rules:

4 23194
12 23194
22 23194
52 23194
226 22841
252 22841
1834 23199
1841 23199
1846 23199
1851 23199
1852 23199

49 CFR

107 ..... 22798, 23503
171 22798
383 24684
384 24684
501 23158
571 21850
1572 24353

Proposed Rules:

575 20597
622 20074

50 CFR

17 ..... 22626, 23984, 24008
217 20800
622 ..... 22950, 23858
635 20258
640 22950
648 ..... 20037, 20260, 21071, 25003
660 24360
679 ..... 20037, 23683, 23864, 24361, 24362, 25004

Proposed Rules:

17 ..... 20074, 21086, 22506, 23533, 24472, 24516, 24604, 25033, 25041
20 21200
216 20604
218 22096
223 ..... 20718, 24701
224 ..... 20718, 24701, 25044
229 23708
600 20291
622 ..... 20292, 20496, 25047
635 ..... 21584, 24148
648 ..... 23733, 25052
679 24707

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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S. 716/P.L. 113–7
To modify the requirements under the STOCK Act regarding online access to certain financial disclosure statements and related forms. (Apr. 15, 2013; 127 Stat. 438)
Last List March 28, 2013

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